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REPORT
No. 98-62

IMMIGRATION REFORM AND CONTROL

REPORT

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ON

S. 529

WITH

ADDITIONAL AND MINORITY VIEWS

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IMMIGRATION REFORM AND CONTROL

————————.—Ordered to be printed

Mr. SIMPSON, from the Committee on the Judiciary,
submitted the following

REPORT

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany S. 529]

The Committee on the Judiciary, to which was referred the bill (S. 529) to amend the Immigration and Nationality Act, and for other purposes, having considered the same, reports favorably thereon, with amendments, and recommends that the bill as amended do pass.

I. PURPOSE AND SUMMARY

The Committee bill is intended to increase control over both illegal and legal immigration.

In order to reduce the primary incentive for illegal immigration, the availability of U.S. employment, the bill makes unlawful the knowing employment, or the recruitment or referral for a fee, of illegal aliens; provides for a system to verify work eligibility; and establishes appropriate civil and criminal penalties for violations. In addition, the bill establishes new crimes for certain activities involving fraudulent documents and for bringing illegal aliens to the U.S.; states the sense of Congress that resources for conventional enforcement should be increased; requires the imposition of fees for use of Immigration and Naturalization Service border and other facilities; provides for more efficient adjudication of exclusion, deportation, and asylum cases; and prohibits adjustments of status by visa abusers.

S. 529 also reforms legal immigration so that it might better serve the national interest. The current system of numerical limitations is revised in order to reduce the growth in the number of immigrants to the U.S., to reserve limited family reunification visas for the closest family members, to increase the immigration opportunity of aliens who have no close relatives in the U.S. but who have needed skills, and to preserve diversity in immigration flows. The labor certification requirement is amended to permit certification based on general labor market information, rather than only on analysis of the impact of specific aliens in specific jobs, and to require a reasonable training effort by employers. Special immigration benefits are provided for certain children of employees of international organizations, surviving spouses of deceased such employees, and retired such employees, who have been in the U.S. many years.

The bill also amends certain provisions of the law relating to nonimmigrants. The H-2 temporary worker program is revised in order to assist agricultural employers in adjusting to the reduced availability of illegal foreign workers. Most foreign students are prohibited from adjusting their status to permanent resident and from obtaining an immigrant visa or certain work-related nonimmigrant visas until they have returned home for 2 years. A pilot visa waiver program is authorized for eight countries with low rates of visa denial and exclusion.

In addition the bill provides for legal permanent resident status for certain illegal aliens who entered prior to January 1, 1977 and for legal temporary resident status for illegal aliens who entered prior to January 1, 1980, with an opportunity to adjust to permanent status after 3 years under certain conditions, including evidence of a minimum English language competence or of enrollment in a program to acquire such competence.

Finally, the bill requires certain reports from the President to Congress with respect to the employer sanctions provisions, legal immigration, the legalization program, the H-2 program, and the visa waiver program.*

II. GENERAL STATEMENT

A. INTRODUCTION

No other country in the world attracts potential migrants as strongly as the United States of America. No other country approaches the United States in the number of legal immigrants accepted or refugees permanently resettled. The Committee believes that most Americans are proud of both the reputation and the history of this country as a land of opportunity and refuge. We believe that this reputation and history have generally had a positive effect on America.

However, current U.S. immigration policy is no longer adequate to deal with modern conditions, including the growing immigration pressure on the United States. Immigration to the U.S. is "out of control" and it is perceived that way at all levels of government and by the American people—indeed by people all over the world.

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*The bill also states the "sense of the Congress" that English is the official language of the United States.

The Committee believes that reform is imperative. This does not mean the U.S. must isolate itself from the rest of the world. Immigration shall continue to serve the national interest, but the law must be reasonably amended to be appropirate for contemporary conditions, and it must be a law that can be enforced. This will in no way be inconsistent with American tradition. Immigration to the United States has been limited in various ways for more than a century and has been subject to forms of numerical limitation for over sixty years.

The moving words on the Statue of Liberty are cited in nearly all discussions of U.S. immigration policy and are certainly consistent with the traditional hospitality and charity of the American people. It is imperative, however, that Americans perceive that this great country is no longer one of vast, undeveloped space and resources, with a relatively small population.

In an earlier time, the nation could welcome millions of newcomers, many of whom brought few skills, but did bring a willingness to work hard. In a smaller America with a simpler, labor intensive economy and a labor shortage, that was often quite enough—that, plus their intense drive to become Americans.

Immigrants can still greatly benefit America, but they should be limited to an appropriate number and selected within that number on the basis of immediate family reunification and skills which would truly serve the interest of a highly developed nation.

B. The National Interest

The Committee believes that the paramount obligation of any nation's government, indeed the very reason for its existence and the justification for its power, is to promote the national interest—the long-term welfare of the majority of its citizens and their descendants.

Consequently, we believe that the formulation of U.S. immigration policy must involve a judgment of what would promote the interests of American citizens—as they are at the present time and as they and their descendants are likely to be in the foreseeable future. An immigration policy which would be detrimental to the long-term well-being of the American people should not be adopted.

We certainly do not mean to suggest that charity and compassion should not play a role in U.S. immigration policy. Even if a particular charitable policy would not promote the national interest, as long as it would not be harmful to that interest and was supported by a majority of the American people, then it should of course be adopted.

Because the well-being of individuals is affected by both economic and noneconomic circumstances, an immigration policy which serves the national interest should be based on an analysis of both the economic and noneconomic impacts of immigration. Economic variables include unemployment, wages, working conditions, productivity and per capita Gross National Product (GNP). Noneconomic matters include population size, other demographic phenomena, and such cultural elements as values, customs, institutions, and degree of unity or of tension between subcultures.

There is an additional component of the national interest which a realistic analysis must not ignore. This is related to the ability of human beings to experience change without discomfort and it exists regardless of whether any objectively adverse impacts occur. Although the desire of immigrants from other lands to change their lives totally by coming to the United States is obviously greater than their reluctance to leave their homes, the ability of the American people to welcome aliens into their day-to-day life experiences has limits. These limits depend in part on the degree and kind of change which will be caused in their lives. We see evidence that if the newcomers to a community do not excessively disrupt or change the attributes of the community which make it familiar to its residents and uniquely their "home" (as compared with foreign areas, which they may respect highly but which are not "home" to them), then the newcomers may well be welcome, especially if they make positive contributions to the community's economic and general well-being. On the other hand, it is seen that if the newcomers remain "foreign," they may not be welcome, especially if they seek to carve out separate enclaves to embrace only their own language and culture and if their numbers and the areas of the community which they directly affect are great. This should not be so in the "ideal" world, but it is real.

C. CURRENT PROBLEMS

In the last six years, total legal permanent admission to the U.S. increased from a little over 450,000 in 1976 to 610,000 in 1981, with 1980 experiencing 800,000 admissions (if the 135,000 Cubans and Haitians entering that year are counted). As recently as 1965, the total was under 300,000.

During the same six-year period, the category of "immediate relatives" of U.S. citizens grew 40 percent, from 114,000 to 152,000. Under present law there are no numerical limits on this type of family reunification. In this same period, refugee admissions have ranged from 5,000 in 1977 to a high of over 200,000 in 1980, to 161,000 in 1981. It should be noted that refugee admissions were 93,000 in 1982, but the U.S. continues to take more legal immigrants and refugees for permanent resettlement than the rest of the world combined. It is because of these two categories, "immediate relatives" and refugees, which are not subject to firm annual numerical limits, that immigration to the U.S. has reached its present level. Under current law, legal immigration is probably between 500,000 and 525,000 (if the number of refugees and asylees continues to be in the range of 75,000 to 100,000) plus the growth in the number of "immediate relatives." The level of refugee admissions is set by the President after consultation with this Committee and with the Committee on the Judiciary of the House of Representatives. As a result of the maturing of the consultation process which has occurred in the period since the enactment of the Refugee Act of 1980, the Committee believes that the process provides an appropriate degree of control over refugee admissions.

In addition, hundreds of thousands of illegal immigrants now enter the U.S. every year. Some estimate the net annual inflow at 500,000. The present inflow is probably substantially higher than it was 10 years ago. At least some indication of this can be found in the dramatically increased number of apprehensions. In 1967 the number was 162,000. In 10 years it had increased to over one million, and it exceeds that rate today.

Just 5 years ago applicants for asylum numbered less than 5,000. Today the backlog is over 140,000. We are informed that a significant portion of these persons may be "economic migrants" and thus not legally qualified for asylum.

The number of illegal aliens already in the country is unknown. The Select Commission on Immigration and Refugee Policy used the figure of 3.5 to 6 million as the best guess for 1978. Whatever the number 5 years ago, there are surely many more now.

Immigration—legal plus illegal—now appears to be accounting for 30 to 50 percent of our annual population growth of about 2 million.

At the present time, net immigration—legal plus illegal—probably exceeds 750,000 per year. A net annual immigration of 750,000 would lead to a U.S. population in a hundred years of 300 million, if it is assumed that the fertility rate of the existing population remains at its present low level—which seems unlikely—and the fertility rate of the new immigrants immediately declines to that of the present population as a whole—which is even less likely, given the high fertility rates of the less developed countries from which most of the immigrants come. One-third of this 300 million would consist of immigrants arriving after 1980 and their descendants.

Indeed, these figures actually underestimate the impact of immigration. Since it is concentrated in only a few regions of the country, the impact on these regions is of much greater significance then the overall figure suggests. For example, under the same assumptions and assuming continuance of existing settlement patterns, the population of California would double by 2080. Over one half of that state's population would consist of post-1980 immigrants and their descendants.

The problems which may be caused by excessive population growth are well known and we shall not dicuss them here.

Not only is there a very large number of legal and illegal immigrants, but only a small fraction of them are individually selected on the basis of labor market skills which have been determined to benefit the nation as a whole rather than primarily the interests of the immigrants themselves or their U.S. relatives.

As a result of this and of the fact that the present labor certification process may be of limited effectiveness, we believe there have been generally adverse job impacts, especially on low income, low-skilled Americans, who are the most likely to face direct competition, even though we also perceive a degree of economic growth from the use of "cheap" labor. Such adverse impacts include both unemployment and less favorable wages and working conditions. Not only does this cause economic harm to the directly affected Americans and their families, and in many cases a burden on the taxpayers, but it may also affect society as a whole in the form of social problems associated with unemployment and poverty.

Opponents of more comprehensive enforcement of the immigration laws have claimed that Americans will not take certain "menial" jobs. The Committee believes that this claim has been overstated.

First, many illegal aliens are working in nonmenial jobs which unemployed, underemployed, or less well-paid Americans would clearly take. This will be increasingly true if Federal and State support for various public assistance programs continues to be reduced.

Second, many other jobs which are not now attractive to a sufficient number of qualified Americans, could be made so if employers were to offer higher wages, better working conditions, or a reasonable training program. if a job cannot be filled by Americans at an affordable cost, then if possible it should be mechanized through additional capital investment and more advanced technology. Alternatively, a business might relocate some labor-intensive production overseas or the product or service might be imported from a foreign firm or simply forgone.

The Committee believes that bringing in foreign labor should be a very last resort. Even if no direct displacement of Americans occurs, such action will frequently reduce this country's average productivity and per capita Gross National Product (GNP), a commonly used measure of a nation's prosperity.

In any case, if it is concluded that the use of foreign labor is beneficial under certain circumstances, then the law should allow this use under the appropriate limitations and conditions. Obviously, however, if the necessary limitations and conditions cannot be enforced, then no beneficial results can be assured.

Although population and direct economic impacts are of great significance, we think most people would agree that the national interest of the American people also includes certain even more important and fundamental aspects, such as the preservation of freedom, personal safety, and political stability—as well as the public cultural qualities and the political institutions which are their foundation.

No one seeking to enter the United States should be discriminated against because of race, color, or religion, as has sometimes happened in the past. This nation does have a right, however, to expect that anyone wishing to obtain the freedom and opportunity which is to be found in America will apply lawfully for entry and that those who are allowed to enter will seek to assimilate into American society, adopting and supporting the public values, beliefs and customs underlying America's success.

In the past several years a large majority of the new legal immigrants joining American citizens and permanent residents in the United States has come from Latin America, Asia, and the Caribbean area. With respect to illegal immigrants, it is estimated that Mexico is the source of at least 50–60 percent of the total, other parts of Latin America 10–15 percent, and the Caribbean area 5–10 percent.

To a large extent, the effect of such patterns will depend upon the degree and the pace at which immigrants and their descendants follow the historical pattern of earlier immigrant groups in assimilating into American society and culture.

A desire to assimilate is often reflected by the rate at which an immigrant completes the naturalization process necessary to become a U.S. citizen. There is considerable variation in the naturalization rates of immigrants from different countries of origin. A sample of those granted permanent resident status in 1971 was examined by the staff of the Select Commission on Immigration and Refugee Policy. Of those of Mexican origin who remained in the U.S. at the end of 7 years, only 5 percent had naturalized. for the entire region of South America the rate was 24.6 percent, for Europe 42.6 percent, and for Asia 80.3 percent (excluding China, India, Korea, and the Philippines, whose rates were, respectively, 73.8 percent, 67.8 percent, 80.9 percent, and 67.6 percent). Interestingly, Canada's naturalization rate was 3.4 percent.

If immigration is continued at a high level, yet a substantial portion of these new persons and their descendants do not assimilate into the society, they have the potential to create in America a measure of the same social, political, and economic problems which exist in the countries from which they have chosen to depart. Furthermore, if language and cultural separatism rise above a certain level, the unity and political stability of the nation will—in time—be seriously diminished. Pluralism, within a united American nation, has been the single greatest strength of this country. This unity comes from a common language and a core public culture of certain shared values, beliefs, and customs which make us distinctly "Americans."

D. The Solution—S. 529

(1) TITLE I—CONTROL OF ILLEGAL IMMIGRATION

Most importantly, S. 529 contains provisions intended to reduce the problem of illegal immigration.

Obviously, the potential benefits and protections sought under even the most carefully designed statutory standards for determining who may enter the United States, as well as for how long and under what conditions they may remain, will not be available in practice if those statutory standards cannot be enforced.

a. Employment

There are only two types of solutions available to the problem of illegal immigration.

The first is direct enforcement: (A) to physically prevent illegal entry into the United States, for example through border control, fences, and interdiction, and (B) to find and deport those who are successful in entering illegally, as well as those who enter legally and then violate the terms of their visa.

The second type of solution involves reducing the incentives to enter.

All objective, comprehensive studies of the problem of illegal immigration, including those by the Ford, Carter and Reagan Administrations, as well as the Select Commission on Immigration and Refugee Policy, have concluded that adequate enforcement of U.S. Immigration laws cannot be achieved by direct enforcement alone. The Committee agrees.

Reliance on direct enforcement alone would require massive increases in enforcement in the interior—in both neighborhoods and work places—as well as at the border. This would be more costly and intrusive, as well as less effective, than a program which combines direct enforcement at reasonable levels with a reduction in the incentives to enter the United States.

At the present time there is a substantial disparity in job opportunity between the United States and Third World countries—a disparity which may well continue or even widen as a result of political and social conditions in those countries. Such disparity exists not only in rates of unemployment, but in wages and working conditions. Even if the unemployment rates were reduced, a difficult task in light of the high birth rates in these countries, the disparity in wages and working conditions would remain.

As long as greater job opportunities are available to foreign nationals who succeed in physically entering this country, intense illegal immigration pressure on the United States will continue. This pressure will decline only if the availability of United States employment is eliminated, or the disparity in wages and working conditions is reduced, through improvement in the Third World or deterioration in the United States.

The United States should, of course, assist Third World development, but the achievement of substantially higher living standards there is a prospect only for the long run, and in the short run Third World development may actually increase migration to the United States. Since deterioration in the United States is certainly not an attractive resolution, only one approach remains: To prohibit the knowing employment of illegal aliens.

S. 529 provides for penalties against employers who knowingly employ illegal aliens and also against persons who knowingly and for a fee recruit or refer for employment such illegal aliens.

In order to protect both the persons subject to penalties and the members of minority groups legally in this country, the bill provides a system to verify that employees and potential employees are eligible to work in the United States. A formal, effective verification system combined with an affirmative defense for those who in good faith follow the proper procedure is imperative. Otherwise, the system cannot both be effective and avoid discrimination. If employers, recruiters, and referrers are given no protection, they will feel insecure and seek to avoid penalties by avoiding persons who they suspect might be illegal aliens, in other words those who "look or sound foreign" to them. If, on the other hand, they are given protection by utilizing a system which is easily defeated, for example one which relies indefinitely on existing documents, most of which are widely available in altered or counterfeit form or may readily be obtained fraudulently, then very little screening is likely to occur, even if the vast majority of employers, recruiters and referrers seek to obey the law, which we believe will be the case.

For the first three years after enactment, a transitional verification system will be used. It will involve examination of either a U.S. passport or two other existing documents adequate to verify both that the applicant is presenting his true identity and that he is authorized to work. The user of the system will then sign under penalty of perjury a statement that the required documents have been examined, and obtain the signature of the prospective employee that he is a U.S. citizen, permanent resident alien, or alien authorized to perform the particular work. In many cases existing application forms or something very similar could be used. In addition, the employer will be responsible for retaining these signed forms for five years, or until one year after the employment ends, whichever is later. The Committee emphasizes that the user of the system will not be responsible for the genuineness of the documents, only that such documents reasonably appear on their face to be genuine.

The bill requires the Executive Branch within three years to design and implement improvements in the system in order to make it more secure against fraudulent use. For example, whether the system were based on a card or other document or on a verifying telephone call to a government office, it would have to be resistant to use by imposters. If the system were to utilize a card or other document, such document would have to be resistant to counterfeiting and tampering, unless the President and the Judiciary Committees of the Congress agreed that this was unnecessary to the reliability of the system. In the final system, the underlying nonsecure documents, such as the birth certificate, would be examined by immigration experts. Users would utilize only the more secure system based upon them. Thus, although the verification would still be based ultimately on nonsecure documents, these documents would be examined by immigration experts, not the users of the verification system.

For employers of four or more employees, use of verification system will be mandatory. If such employers hire without using the system, they will be subject to a $500 fine. Smaller employers and those who for a fee recruit or refer for employment may use the system if they wish to have available the affirmative defense.

The Committee emphasizes that the government will have the burden of proving that an employer has hired or continued to employ an alien knowing that the alien was not eligible to work at the job. Under no circumstances will any presumption exist in favor of the government, even if the employer fails to follow the mandatory verification procedures. As indicated, if an employer follows in good faith the bill's verification procedures with respect to a particular alien, then the employer will have an absolute defense to any prosecution or penalty assessment with respect to that alien. Even if the employer chooses not to seek this affirmative defense, however, the burden of proving a knowing violation will remain on the government—by preponderance of the evidence in the case of civil penalties and beyond a reasonable doubt in the case of criminal penalties.

It has been claimed that a new verification system would be too costly and that it would pose a threat to privacy and civil liberties.

There are also tremendous costs in inadequate enforcement. The Congressional Budget Office has estimated that each unemployed person in the U.S. receives an average of about $7,000 per year in unemployment and welfare benefits. If the number of illegal aliens in the U.S. today is estimated at 6,000,000, and if even one percent hold jobs which unemployed Americans would take, then the savings would be $420,000,000 per year; if the displacement is two percent, the figure would be $840,000,000 per year, etc. Actual displacement is probably substantially higher.

The Social Security Administration recently estimated that the cost of replacing all Social Security cards with a tamper- and counterfeit-resistance version would be $108 million per year for ten years. The actual cost of this option should be lower since replacement of all cards would not be necessary. The Department of Labor has estimated the cost of a verification system utilizing telephone calls to a government data bank as averaging $333 million per year for the first 5 years and about $200 million per year thereafter. Doubling the number of interior Immigration and Naturalization Service investigators would add $25–$30 million per year. Thus, a new system to verify work eiiligibility may well not exceed in cost the amount directly saved as a result of reduced public assistance alone, not even considering the value of the other benefits of reducing illegal immigration. Furthermore, a small fee could be civil utilized to raise the necessary revenue.

With respect to civil liberties, the Committee has given considerable thought to the question of how, for example, changing the form of the Social Security card, which is one of the alternatives that are available could pose risks to liberty.

That question was asked of many witnesses at the hearings of the Subcommittee on Immigration and Refugee Policy—from the ACLU to Arthur Flemming of the U.S. Commission on Civil Rights. No one has yet given a satisfactory answer others never known for their neglect of civil and human liberties—agree with us, including Father Ted Herburgh, former Chairman of the Select Commission on Civil Rights and the editorial writers of the New York Times, Washington Post, Los Angeles Times, Boston Globe and other major newspapers across the country, as well as former Attorneys General Elliot Richardson and Benjamin Civiletti.

We wish to emphasize that neither the transitional nor the permanent verification system will require personal data that is not already available in other government data banks. Thus, the verification system will either utilize a pre-existing data bank or a new one with less information.

Furthermore, the bill contains specific safeguards intended to minimize the risk of undue invasion of privacy and the risk of government abuse: (1) Personal information utilized by the system will not lawfully be available to government agencies, employers, and other persons except to the extent necessary for the purpose of verifying work eligibility. (2) A withholding of verification will not be lawful except on the basis that the employee or prospective employee has failed to show that he is a U.S. citizen, an alien lawfully admitted for permanent residence, or an alien authorized to be so employed by the Immigration law or the Attorney General. (3) The system will not lawfully be available for law enforcement use outside the proposed employer sanctions and present labor law procedures. (4) If the system were to require individuals to present a card or other document, then such document would not be required to be presented for any purpose other than verification of employment eligibilty at the time of new hire, and would not be required to be carried on the person. The Committee is most emphatically not requiring or permitting the development of an "internal passport" or "national I.D. card."

In addition to the protective provisions in the bill, there are far stronger protections already in place. The most important safeguard of the civil liberties of Americans is not "the law", which can always be changed, but rather the public cultural elements which underlie the law, including the values and traditions of our form of government, which are part of the American character. As long as the American people themselves do not come to accept and adopt forms of government like those of nations more willing to tolerate repression in their political system and leaders, then no danger exists. There is no "slippery slope" toward loss of liberties, only a long staircase where each step downward must be tolerated by the American people and by their leaders. The Committee does not believe that the system being proposed involves any form of a step toward loss of civil liberties.

With respect to the penalties for knowing employment or knowing recruitment or referral for employment, the bill's provisions are, in the view of the Committee, quite reasonable. Indeed, no penalty at all will be imposed during the first six months after enactment, nor will any violation during that period be counted for purposes of determining the level of penalty for later violations. Even in the second six months after enactment, the initial violation will be subject only to a warning and it will not be counted for the purposes of determining the level of penalty later. For this first year of enactment the bill directs various government agencies to cooperate in disseminating forms and information to employers and other Americans, and otherwise educating the public about the requirements of the program.

Under the normal penalty structure, the first assessment of penalties will be at a rate of $1,000 per illegal alien. This will be a civil, not a criminal, penalty. For a violation occurring after at least one prior penalty has been assessed and opportunity for an administrative hearing has been provided, a civil penalty of $2,000 per illegal alien may be imposed.

Only for "a pattern or practice" of violation, may a misdemeanor (criminal) penalty of $1,000, six months imprisonment, or both, be imposed. General principles of criminal law will apply. Therefore, only a person with the requisite managerial authority who has been shown beyond a reasonable doubt to have had an awareness or belief that he was hiring or continuing to employ, or for a fee recruiting or referring, illegal aliens will be subject to criminal penalties. A jury trial will, of course, be available. In addition to these penalties the Attorney General will be able to seek an injunction in a U.S. District Court for a pattern or practice of violation.

Stiff criminal penalties are provided for the fraudulent production, sale, distribution, or use of any document which may be presented to satisfy a requirement of the immigration laws (or which may be presented to obtain such a document).

Concern has been expressed that the employer sanctions program will be used as an excuse by employers who want to avoid hiring certain persons because of their race or national origin. The Committee believes that any such discrimination in hiring is a violation of Title VII of the Civil Rights Act of 1964. If an action were brought against such an employer, the employer might allege that his decision not to hire was motivated by a fear of employer sanctions. If, however, the plaintiff were to show by a preponderance of the evidence that the employer did not actually have such fear, then such allegation would not have helped the defendant's case. The most likely form of such evidence would be a sworn statement that documents had been presented to the employer showing that the applicant was authorized to be so employed, along with the documentary evidence itself (which would of course be in the possession of the applicant). If the documents appeared on their face to be genuine and to belong to the applicant, and if the employer were unable to present equally convincing evidence that such documents had not been presented or that despite the documents the employer had reasonable grounds for believing the applicant to be an alien ineligible to be so employed, then the judge or jury would conclude that the employer's reason for deciding against hiring the applicant was something other than a fear of employer sanctions.

b. Enforcement and fees

S. 529 states the sense of Congress that resources for border patrol and other enforcement activities should be increased and requires that fees be imposed for use of border and other INS facilities and services in an amount commensurate with cost.

In addition the bill creates a new criminal offense for bringing an alien to the U.S. with knowledge or in reckless disregard of the fact that the alien has not received prior official authorization to enter, regardless of whether fraudulent, evasive, or surreptitious means are used.

c. Exclusion, deportation, and asylum

In an attempt to further deter the violation of U.S. immigration law and to reduce the harmful impact of such violations when they do occur through reducing the time illegal aliens are able to remain in the country after apprehension, S. 529 contains improvements in exclusion, deportation, and asylum adjudication procedures. At the present time aliens not legally entitled to be in this country are able to stay for months or even years, pursuing various stages of appeal. Furthermore, during such delay most are able to move freely in American society, many with work authorization. Obviously this does not provide much deterrence.

The bill provides a summary exclusion proceeding without an appeal for those who enter the country without documents and who are not claiming asylum. For all cases involving asylum, the bill provides for extensive administrative consideration, within the Justice Department but independent of the Immigration and Naturalization Service—first a hearing on the record before a specially trained immigration judge (in which the applicant would be entitled to be assisted by counsel without charge to the government or unreasonable delay, to present evidence, and to examine and cross-examine witnesses) and then, if desired, an administrative appeal to a newly created United States Immigration Board. Consistent with the practices of most other countries, there will be no right of further review on the issue of asylum, other than the constitutionally guaranteed right to seek a writ of habeas corpus. The Attorney

General, in his discretion, may provide that a case which has been decided by the Board be certified to him for his own review. If the Attorney General reverses or modifies the Board's decision, then judicial review in the Circuit Court of Appeals will be available—as in a deportation case.

Outside of this asylum area, the bill streamlines the adjudication procedure for both deportation and exclusion. In exclusion cases not involving asylum and not subject to the summary exclusion procedure, a hearing will be held before an immigration judge. Appeals would be available to the same degree as in asylum cases.

In deportation the procedure will be the same as in exclusion except that judicial review of the decision of the Board will be available at a Circuit Court of Appeals, but limited to the issue of whether the Board's findings were supported by substantial evidence.

Some persons have indicated concern that judicial review of asylum decisions of the United States Immigration Board will not be available unless the Attorney General reverses or modifies the Board's decision. See Section-by-Section Analysis relating to Sec. 123(b). It is true that a review will not be available comparable to that provided in INA section 106(a) for non-asylum deportation cases, i.e. one with a substantive review of the Board's decision (including whether or not the findings of fact are supported by substantial evidence). However, the Committee believes that the issue of whether aliens are being denied asylum in violation of their constitutional right to due process may be considered by a federal court in the habeas corpus proceedings guaranteed under the Constitution. Due process for an alien applying for asylum will include the individual adjudication of his claim through fundamentally fair procedures, procedures which could be relied on for an objective determination, on the merits, of whether or not the individual applicant satisfies the statutory definition of "refugee" in INA section 101(a)(42) and whether or not his "life or freedom" would be threatened "on account of race, religion, nationality, membership in a particular social group, or political opinion" if he were returned to his home country (or another country to which he might be deported), as provided in INA section 243(h). An example of such a due process violation would be a pattern or practice of denying asylum applications made by aliens from a particular country because of their national origin rather than on the basis of the merits of their individual claims.

Aliens in physical custody and those paroled pending their hearing, subject to conditions which constitute a "significant restraint on liberty," are in custody for the purpose of determining habeas corpus jurisdiction. See *Hensley* v. *Municipal Court,* 411 U.S. 345 (1973) (prisoner case in which the convicted petitioner had been released on his own recognizance pending execution of sentence, subject to his written agreement that he would appear as ordered by the court, that if he did not appear and was apprehended in another state he would waive extradition, and that any court could revoke the order of release and either return him to custody or require bail or other assurance of appearance); *Jones* v. *Cunningham,* 371 U.S. 236 (1963) (prisoner case in which the petitioner had been released from prison on parole, subject to such restrictions as a requirement to obtain permission of parole officer before leaving community, changing residence, or operating a motor vehicle, and to make monthly reports, to permit the officer to visit his house or place of employment at any time, and to follow the officer's instructions and advice). Although these cases considered the statutory right of habeas corpus under 28 U.S.C. § 2241, the Committee believes the reasoning of the opinions would also apply to cases involving the "privilege of the writ of habeas corpus" guaranteed in the Constitution, Art. I, § 9, cl. 2. See "Developments in the Law—Federal Habeas Corpus," 38 Harv.L.Rev. 1038 (1970). Some indication of the view of the U.S. Supreme Court on the issue of what kind of custody or restraint on liberty is required for constitutional habeas corpus may be found in the court's opinion in *Jones* v. *Cunningham*, supra:

> Habeas corpus was used in 1763 to require the production in court of an indentured 18-year-old girl. . . . Although the report indicates no restraint on the girl other than the covenants of the indenture, the King's Bench ordered that she "be discharged from all restraint, and be at liberty to go where she will." (footnotes omitted) 371 U.S. at 239.

Because in an asylum case no court within the judicial branch will otherwise have an opportunity to examine for procedural due process the executive action imposing the custody or restraint on liberty, and because in asylum cases the result of a failure to provide procedural due process may ultimately be severe prejudice to the applicant (if he is returned to a place where he will be persecuted), the Committee believes that a federal district court would permit an asylum applicant to obtain through a habeas corpus proceeding judicial determination of whether or not procedural due process had been violated during the adjudication of his application.

In other words, the restriction on judicial review is not intended to prevent a federal court from correcting through habeas corpus proceedings a violation of due process. On the other hand, the Committee intends that there be no judicial review of the merits of any individual asylum case, and no judicial review of the procedural aspects of any particular adjudication unless the petitioner has alleged procedural defects which are fundamental and clearly prejudicial. The Committee also intends, to the degree constitutionally appropriate, that the courts not prevent the commencement of the administrative process or interrupt or stay ongoing administrative determinations and that the appellate federal courts not stay exclusion or deportation orders with respect to appellants denied writs of habeas corpus at the district court level unless the appellant shows the likelihood that he would prevail on the merits, and that denial of the stay would cause him irreparable injury.

Finally, the Committee notes that, although there appears to be disagreement among several Circuit Courts of Appeal on the issue of whether the class action provisions of Rule 23 of the Federal Rules of Civil Procedure are available in habeas corpus proceedings, an issue which has not yet been resolved by the Supreme Court, there is no doubt that at a minimum:

> a federal court may permit multi-party habeas actions similar to the class actions authorized by the Rules of Civil Procedure when the nature of the claim so requires. *U.S. ex rel. Sero* v. *Preiser,* 506 F.2d 1115 (2d Cir. 1974), cert. denied 421 U.S. 921 (1975).

Bertrand v. *Sava,* 535 F. Supp. 1020, 1024 (S.D.N.Y. 1982) (appeal pending on unrelated issues).

d. *Adjustment of status*

At the present time a great many immigrant visas are given to those who have entered the U.S. as nonimmigrants and then violated the terms of their visa. S. 529 limits the availability of adjustment of status for such visa abusers unless they are an "immediate relative" of a U.S. citizen. This is intended to act as a mild deterrent.

e. *Assistance to employers to adjust to the loss of illegal foreign workers*

As a result of the measures discussed and the increased resources we expect will be devoted to enforcement by the Immigration and Naturalization Service, illegal immigration should be reduced substantially. We recognize the possibility that substantial adverse economic impact might occur on certain employers who have quite lawfully become dependent on illegal foreign workers.

We have attempted to deal with this problem by several provisions which will provide some transitional assistance to employers in order that they will have an opportunity to adjust to the new labor market situation.

First, the employer sanctions program will not apply to illegal aliens hired before the bill is enacted

Second, the legalization program, which will be later discussed, will legalize many currently illegal workers.

Third, the certification of the Department of Labor which must be obtained for certain job-related immigrant visa categories, is modified to allow a more efficient and accurate determination of when a foreign worker is needed.

Finally, the H-2 program is modified, as discussed below, so that employers who can demonstrate a genuine need for a foreign worker for temporary services or labor will receive an approval within a reasonable period of time.

(2) TITLE II—REFORM OF LEGAL IMMIGRATION

In addition to reducing illegal immigration, S. 529 is intended to modify legal immigration so that it will better serve the national interest—by increasing control over the number admitted and by amending the selection criteria.

a. *Immigrants*

The bill divides immigrants into two broad categories: (a) family reunification immigrants, which includes numerically unlimited "immediate relatives" of U.S. citizens and numerically limited family reunification preference immigrants, and (b) independent immigrants, which includes numerically unlimited "special immigrants" and numerically limited independent preference and nonpreference immigrants. Although "immediate relatives" of U.S. citizens will continue to be exempt from numerical limitations, the number available for the family reunification preference categories would be determined by subtracting the number of such immediate relatives admitted in the prior year from 350,000. Therefore, any increase in the number of "immediate relatives" will be compensated for by a reduction in the visa numbers available for other family reunification categories. A similar approach will link the numerically exempt "special immigrants" with the independent preference categories. The limit will be 75,000 minus the number of "special immigrants" admitted in the prior year.

The effect of these changes is that for the next 10–30 years, at least, the total of all new immigrants, excluding refugees, will not exceed 425,000 which is approximately the current level. That level will be exceeded only when the number of immigrants who are "immediate relatives" of U.S. citizens increases from its present level of about 152,000 to in excess of 350,000 per year, and only by the amount of such excess. Under present law increases in the number of "immediate relatives" do not require any offsetting reduction in admissions under any of the numerically limited categories.

The bill amends the "per-country ceiling" to provide that, except for Mexico and Canada, the number of immigrants from a single country which may be admitted in one year may not exceed 20,000 minus the number of "immediate relatives" and "special immigrants" admitted from such country in the prior year in excess of 20,000. For Mexico and Canada, the ceiling for each country will equal 40,000 minus such excess of "immediate relatives" and "special immigrants" over 20,000 in the prior year, plus the unused numbers from the other country in the prior year.

S. 529 makes several changes in the current criteria for allocating numerically limited immigrant visas.

The family preference category referred to as the 5th preference, that is the brothers and sisters of adult U.S. citizens, has been narrowed to cover the unmarried brothers and sisters of adult U.S. citizens. This is done in order to reserve for the closer relatives the limited visas available for family reunification and to allow an increase in immigration opportunities for those who have no close relatives in the United States but who do have skills which will benefit the American people as a whole. Those married brothers and sisters of adult U.S.citizens for whom petitions were filed prior to the date of enactment will be protected. For the same reasons, the definition of 2nd preference will be narrowed somewhat to cover spouses and minor children of permanent residents—their "nuclear family." The percentage of family reunification visas allocated to this category is increased greatly.

The independent categories include one for substantial investors in the U.S. economy who create jobs for U.S. citizens and permanent residents other than their own relatives. The highest priority independent preference category is reserved for aliens with exceptional ability in the sciences, arts, professions, or business. This is the present third preference with certain exceptions: business is added to the fields covered, exceptional ability is required of members of the professions, and its is explicitly stated that possession of a degree, diploma, certificate, or similar award from an institution of learning, or of a license to practice, or certificate for a particular profession or occupation shall not by itself be considered sufficient evidence of the requird exceptional ability.

New family reunification preference categories, along with their share of the total ceiling for such categories, are as follows:

(a)(1): unmarried adult sons and daughters of U.S. citizens (present first preference): 15 percent plus unused in (a)(4);

(a)(2): spouses and minor children of lawful permanent residents (present second preference, minus adult sons and daughters): 65 percent plus unused in (a)(1);

(a)(3): married adult sons and daughters of U.S. citizens (present fourth preference): 10 percent plus unused in (a)(1) and (a)(2);

(a)(4): unmarried brothers and sisters of adult U.S. citizens, and those married brothers and sisters whose visa petitions have already been filed (the present fifth preference backlog as of date of enactment): 10 percent plus unused in (a)(1)–(a)(3).

New independent prefernce categories, along with their share of the total ceiling for such categories, are as follows:

(b)(1): aliens of exceptional ability (a modified form of the present third preference) will be allowed up to the ceiling;

(b)(2): skilled workers needed in the U.S. (part of present sixth preference): visas unused in (b)(1);

(b)(3): investors of $250,000 in a new enterprise creating at least four jobs: visas unused in (b)(1) and (b)(2) (no more than 10 percent of the ceiling):

(b)(4): nonpreference aliens (the unskilled portion of the present sixth preference, plus nonpreference aliens): visas unused in (b)(1)–(b)(3).

The bill modifies the requirement of section 212(a)(14) of the INA that the Secretary of Labor certify that aliens seeking to enter the U.S. for the purpose of performing labor will not adversely affect U.S. workers. The new section authorizes the Secretary of Labor to use general labor market information in considering the certification rather than only an analysis of the impact of the specific alien in the specific job. In addition the bill provides that the certification must include a finding that sufficient U.S. workers could not be trained within a reasonable period of time, and authorizes the Attorney General to waive the requirement of a job offer with respect to an alien seeking to obtain the status of an immigrant under section 203(b)(1) of the INA.

b. Nonimmigrants

In addition S. 529 proposes to change the law with respect to certain nonimmigrant categories.

The bill amends the H–2 temporary worker program to establish a special procedure for seasonal workers in agriculture:

Employers may not be required to apply more than 80 days in advance of need;

The Secretary of Labor is directed to provide a decision on certification at least 20 days in advance of need;

If certification is denied, the Secretary of Labor will make available an expedited procedure to review such denial, or, at the applicant's request a de novo administrative hearing;

If the Secretary of Labor determines that a certain number of qualified U.S. workers will be available at the time needed but at that time the U.S. workers are not available or are not qualified, then an expedited procedure to determine continued need will be available. If the employer claims that the U.S. workers were not qualified, the employer will have the burden of proving such lack of qualification.

The bill provides that all regulations implementing the program must be approved by the Attorney General after consultation with the Secretary of Labor and Secretary of Agriculture.

The Secretary of Labor is authorized to monitor and enforce terms and conditions of the program.

The Committee rejected proposals to adopt a massive new temporary or "guest worker" program. Such a program would create significant dangers, including adverse impacts on U.S. workers, especially if the temporary workers were not limited to the particular job or job category where they were allegedly needed. Many of the temporary workers could choose to stay permanently, as they have in Europe, where significant social problems resulted, as well as considerable doubt that the guestworker program had been a workable idea. Permanent stays are especially likely if the workers may bring in their family, if they have U.S. citizen children, if they are not restricted to a particular job or job category, or if they are authorized to stay for long periods in the U.S. (such long periods of stay increase ties to the U.S. and also the likelihood that the workers will being in their family even if it is illegal, or if they have no family, that they will start a family in the U.S.). Furthermore, to the extent that temporary workers believe that they will be returning to their home country, they will tend not to learn English and otherwise integrate into American life. They will tend to form foreign enclaves, with associated social problems, and may even delay the integration of lawful permanent residents from the same country of origin.

In addition the bill prohibits foreign students from adjusting their status to permanent resident and provides that foreign students will not generally be allowed to obtain immigrant status, or temporary worker status under INA section 101(a) (H) or (L), until they have resided and been physically present in their home country for two years after their departure from the United States.

However, the Attorney General will have the authority to waive the two-year residency requirement in the case of students who have earned U.S. degrees in certain high-technology fields, who are seeking to adjust to immigrant in the first independent preference category, and who had been offered a job (a) on the faculty of a U.S. college or university, up to 1,500 a year, or (b) with a U.S. employer in a research or technical position, up to 4,500 per year.

Foreign students are admitted to the United States so that they may be educated and then return to their home country, giving that country the benefit of their U.S. education. In a sense it is a form of foreign aid. Allowing the students to stay is a "brain drain" of their best young talent. The Committee believes that the best long-term way to control immigration pressure on the United States is to encourage political and economic improvement abroad. If foreign students who have received the benefit of U.S. education and exposure to U.S. political values return to their home country, such improvements are more likely to occur. Furthermore, the Committee has been informed that a significant number of foreign students use their stay in the United States as "a scouting expedition" to search for a U.S. employer willing to submit a preference petition on their behalf. Finally, the Committee notes and expresses its concern at what appears to be a growing dependence on foreign high technology labor. Part of this results from a pattern of college and industry recruitment of aliens facilitated by the ability of students to adjust to permanent resident status.

The bill allows the Attorney General and the Secretary of State acting jointly to establish a 3-year pilot visa waiver program after the development of an automated nonimmigrant entry and exit control system. Under the program the requirement of a visitor's visa for the national of 8 countries selected from those which extend or agree to extend reciprocal privileges to U.S. citizens would be waived if such persons have a round trip, nonrefundable, nontransferable ticket and if the rate of exclusion and of visa denial for the nationals of such country is very low. This change would allow the Secretary of State to transfer resources to consular offices where the need to screen visitors is greater. Furthermore, the beneficial entry of desirable business and tourist visitors would be facilitated.

Finally, the bill provides special immigration benefits to certain holders of the G–iv visa if they have resided in the United States for many years, specifically certain retired employees of international organizations, such as the United Nations and the World Bank, surviving spouses of deceased employees of such organizations, and children of such employees.

(3) TITLE III—LEGALIZATION

The United States has become home for millions of illegal aliens, a large number of whom have been here for many years.

S. 529 provides for the legalization of illegal aliens into two categories of legal status.

First, illegal aliens who have continuously resided in the United States since January 1, 1977 will immediately qualify for permanent resident status.

Second, those who have continuously resided in the United States since January 1, 1980, or who are certain nationals of Cuba and Haiti will qualify for a temporary status, which may be adjusted to permanent status after 3 years if the alien has or is acquiring minimum English competence. Aliens in the temporary status will not be eligible for most forms of public assistance.

Federally funded public assistance will not be available either to those in the temporary status or, for 3 years, to those receiving permanent legal status, but certain Cuban and Haitian nationals who are covered by the legalization will continue to qualify for existing special benefits.

The bill provides for block grants to the states by the Secretary of Health and Human Services to meet the cost of state public assistance as a result of the legalization program.

Persons convicted of certain crimes, Nazis and other persons who have persecuted others, Communists, anarchists, saboteurs, and those seeking to overthrow the government will be excluded from each category of legalization. Most other classes of excludable alien will also not qualify, including aliens who are likely to become a public charge, unless a waiver is obtained. See Section-by-Section Analysis relating to Sec. 301.

We seek three major goals through legalization:

The first is to avoid wasteful use of the Immigration and Naturalization Service's limited enforcement resources. The United States is unlikely to obtain as much enforcement for its dollar if the Immigration and Naturalization Service attempts to locate and deport those who have become well settled in this country, rather than to prevent new illegal entry or visa abuse.

The second goal is to allow dependent employers to continue lawfully hiring from this pool of labor.

The third is to eliminate the illegal subclass now present in our society. Not only does their illegal status and resulting weak bargaining position cause these people to depressed U.S. wages and working conditions, but it also hinders their full assimilation, and they then remain a fearful and clearly exploitable group within the U.S. society

It is the intent of the Committee that the families of legalized aliens will obtain no special rights by virtue of the legalization, but will be required to "wait in line" in the same manner as immediate family members of other new resident aliens.

The Committee also intends that the legalization be a "one-time only" program to address a problem resulting from large illegal migration which will be controlled in the future by the employer sanctions' provisions of the bill.

(4) TITLE IV—REPORTS TO CONGRESS AND AUTHORIZATION OF APPROPRIATIONS

The President is required to report to the Senate and House Judiciary Committees on:

(1) the employer sanctions provisions, including an analysis of the progress toward a secure verification system; and the impact of such provisions on illegal immigration, on U.S. employment, on discrimination against ethnic minorities, and on the recordkeeping burden of employers;

(2) Legal immigration;

(3) Legalization;

(4) H-2 program;

(5) Visa waiver program.

The Comptroller General is required to report to the Senate and House Judiciary Committees and Labor Committees annually for five years on the implementation of the employer sanctions provisions, whether any pattern of discrimination has resulted against eligible workers seeking employment, and whether an unnecessary regulatory burden has been created for employers. The Committees are required to hold public hearings on each such report and submit their findings and recommendations for remedial action, if necessary, to their respective Houses of Congress.

The Committee emphasizes that the Civil Rights Commission presently has full authority to study employment discrimination based on race or national origin, to collect and evaluate reports on such discrimination, and to report to the Congress on any such discrimination. The Committee continues to encourage the Civil Rights Commission to study and report to the Congress on the impact of the employer sanctions provisions on discrimination against ethnic minorities.

State and local governments, and other interested public and private sector organizations, are also encouraged to form regional and local implementation task forces. These task forces are to facilitate fair and effective implementation of this act by:

(1) Reviewing and commenting on proposed regulations and procedures;

(2) Monitoring and evaluating the implementation of the act as it proceeds;

(3) Recommending necessary actions to the federal implementing agencies.

The bill authorizes such sums to be appropriated as may be necessary to the GAO for the required reports, and to the Equal Employment Opportunity Commission for its enforcement activities, and finally to the Department of Labor for enforcement activities of the Wage and Hour Division and the Office of Federal Contract Compliance Programs within the Employment Standards Administration of the Department.

In addition, the bill authorizes the appropriation of $200 million for fiscal year 1984 in order to carry out the provisions of S. 529, other than the program of block grant assistance to the States, which is separately determined.

III. RECENT IMMIGRATION STUDIES AND REFORM EFFORTS

The Immigration Reform and Control Act of 1983 represents the most comprehensive immigration reform efforts in the United States in 30 years. The last major legislation enacted in this area was the Immigration and Nationality Act of June 27, 1952, popularly known as the McCarran-Walter Act. The 1952 statute has been modified through the years by a series of amendments, most notably those of 1965 and 1976. These amendments provided primarily for reform of the system for admitting legal immigrants to this country.

While the amendments to the Immigration and Nationality Act ("INA") in the Immigration Reform and Control Act of 1983 would make additional changes in the legal immigration system, a significant portion of the legislation is directed toward improving control of illegal immigration to the United States. During the past decade, the principles embodied in these provisions have been the subject of substantial study by the Executive branch, as well as by the Congress.

The reports and legislative activity generated during this period have focused on the basic components of the immigration reform package of S. 529: employer sanctions, legalization, and increased enforcement.

HISTORY, 92D-96TH CONGRESSES (1971-1980)

In 1971, during the 92d Congress, the House Judiciary Subcommittee charged with immigration matters and chaired by Representative Peter W. Rodino, Jr., initiated a lengthy series of hearings pertaining to the control of illegal or undocumented aliens. Mr. Rodino's subcommittee reported in 1975, that:

> The basic conclusion reached by the majority of the members of the subcommittee as a result of the hearings was that the adverse impact of illegal aliens was substantial, and warranted legislation both to protect U.S. labor and the economy, and to assure the orderly entry of immigrants into this country.[1]

The legislation resulting from these hearings consisted of two bills which would impose graduated administrative, civil, and criminal penalties on employers who knowingly employed illegal aliens. The House Judiciary Committee explained its choice of employer sanctions as the principal means of curbing illegal immigration as follows:

> The committee believes that the primary reason for the illegal alien problem is the economic imbalance between the United States and the countries from which aliens come, coupled with the chance of employment in the United States. Consequently, it is apparent that this problem cannot be solved as long as jobs can be obtained by those who enter this country illegally and by those who enter legally as nonimmigrants for the sole purpose of obtaining employment.
>
> The committee, therefore, is of the opinion that the most reasonable approach to this problem is to make unlawful the "knowing" employment of illegal aliens, thereby removing the economic incentive which draws such aliens to the United States as well as the incentive for employers to exploit this source of labor.[2]

The House Judiciary Committee's employer sanctions legislation was endorsed by both the Nixon and Ford Administrations and passed the House of Representatives twice, during the 92nd Congress (H.R. 16188) and the 93d Congress (H.R. 982). No Senate action on these or similar bills was taken in either Congress.

During the 93d Congress a related measure was passed by both Houses and signed into law by the President. This law amended the Farm Labor Contractor Registration Act of 1963 to establish criminal penalties for certain farm labor contractors who knowingly hire illegal workers.

During the 94th Congress an identical bill to H.R. 982 was introduced in the House and additional hearings were held by the House Judiciary Subcommittee on Immigration, Citizenship, and

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[1] H. Rept. 94-506, 94th Congress, 1st session, Sept. 24, 1975, p. 5.

[2] Ibid., p. 6.

International Law. These hearings resulted in a new version of the bill, H.R. 873, which included, in addition to employer sanctions, a legalization provision for those illegal immigrants who had resided in the U.S. since July 1, 1968, and a provision intended to prevent discrimination against citizens and legal aliens on the basis of "foreign" appearance. This bill was reported out of the full Judiciary Committee in September 1975, but received no further action.

During the 95th Congress a similar bill, H.R. 1663, was introduced by Representative Joshua Eilberg, Chairman of the Subcommittee on Immigration, Citizenship, and International Law, but received no further action.

The principal legislative activity on this issue in the Senate during the 94th Congress focused on S. 3074, an omnibus reform bill introduced by Senator James O. Eastland, Chairman of the Senate Judiciary Committee and the Subcommittee on Immigration and Naturalization. This bill included employer sanctions (civil penalties as well as an injunctive remedy) for the knowing employment of illegal workers, a legalization program with a July 1, 1968, cutoff date for eligibility, and a revision of the H-2 temporary worker program to allow for the admission of foreign workers to perform certain permanent as well as temporary jobs. Subcommittee hearings were held on S. 3074, but the bill was not reported to the full committee.

FORD ADMINISTRATION PROPOSALS

During this period the Executive branch was also engaged in studies and made legislative recommendations on the issue of illegal immigration, which was perceived during this decade to be a significant and growing domestic policy problem.

In January 1975, President Gerald Ford established, under the chairmanship of Attorney General Edward Levi, a Cabinet-level Domestic Council, Committee on Illegal Aliens. This Committee's report which was dated December 1976, stressed that control of illegal immigration will only result from a multi-faceted approach:

> The Committee does not believe any single element among its recommendations can solve the illegal alien problem. It does believe that the cumulative effect of implementing the recommendations which follow will be to slow the flow of illegal aliens significantly and to take major strides toward the development of a more effective immigration policy.[3]

The Committee's recommendations included employer sanctions, a legalization program with a July 1, 1968, eligibility date, increased enforcement resources, increased penalties against smugglers, an evaluation of the H-2 program to make it more responsive to legitimate labor shortages, a revision of immigrant labor certification provisions to eliminate individual certifications, and a broad-based research effort to determine the nature and scope of immigration related problems.

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[3] Preliminary report, p. 240.

CARTER ADMINISTRATION PROPOSALS

The Carter Administration, under the leadership of Attorney General Griffin Bell, Secretary of Labor Ray Marshall, and Immigration and Naturalization Service Commissioner Leonel Castillo determined early in its term that the problem of illegal immigration was a critical national issue:

> These proposed actions are based on the results of a thorough Cabinet-level study and on the groundwork which has been laid, since the beginning of the decade, by Congressmen Rodino and Eilberg and Senators Eastland and Kennedy * * *
>
> Each of these actions will play a distinct, but closely related, role in helping to solve one of our most complex domestic problems. In the last several years, millions of undocumented aliens have illegally migrated to the United States. They have breached our nation's immigration laws, displaced many American citizens from jobs, and placed an increased financial burden on many States and local governments.[4]

After a Task Force study of the issue, a comprehensive immigration reform bill was drafted by the Carter Administration, the "Alien Adjustment and Employment Act of 1977," and introduced in October 1977 as H.R. 9531 and S. 2252.

The Carter proposal contained five basic provisions:

(1) Civil penalties (injunctions and fines of $1,000 per undocumented alien) against those employers who knowingly hire illegal workers;

(2) Increased enforcement of the Fair Labor Standards Act and the Federal Farm Labor Contractor Registration Act targeted to areas with high illegal employment:

(3) Permanent resident status for eligible illegal aliens who had resided in the U.S. since January 1, 1970, and a 5-year temporary resident status for those who had resided continuously since January 1, 1977.

(4) Substantially increase resources for enforcement at the Southern border and ports-of-entry.

(5) Continued cooperation with source countries in their effort to improve their economies and improve control over alien smuggling activities.

While President Carter rejected any new temporary worker program, he did recommend reviews of the existing H-2 temporary worker program and overall U.S. immigration policy. Furthermore, he indicated his support of pending legislation to increase the annual limits of 20,000 each for Canada and Mexico to a combined figure of 50,000, to be allocated on the basis of demand.

The Senate Judiciary Committee held hearings on S. 2252 in May 1978, but the Carter Administration bill received no further action during the 95th Congress.

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[4] "Undocumented Aliens, Message from the President of the United States." U.S. House of Representatives, 95th Congress, 1st session, Doc. No. 95-202, Aug. 4, 1977, p. 1.

The Carter proposals were attacked by some vocal public interest groups and members of Congress who claimed that the package was not sufficiently grounded in factual studies and that other alternatives to curb illegal immigration had not been adequately examined. It was this desire for a comprehensive review of U.S. immigration policy which led to the establishment of the blue-ribbon, bipartisan Select Commission on Immigration and refugee Policy during the 95th Congress.

SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY

Legislation enacted in 1978 (Public Law 95-412) established a 16-member Select Commission on Immigration and Refugee Policy consisting of 4 members of the Senate Judiciary Committee (Senators Mathias, Simpson, Kennedy, DeConcini), 4 members of the House Judiciary Committee Representatives Rodino, Holtzman, McClory, Fish), 4 Carter Administration Cabinet Secretaries (from the Departments of Justice, State, Labor, and Health and Human Services), and 4 public members appointed by President Carter, including its Chairman, the Reverend Theodore M. Hesburgh. Its mandate was "to study and evaluate * * * existing laws, policies, and procedures governing the admission of immigrants and refugees to the United States and to make such administrative and legislative recommendations to the President and to the Congress as are appropriate."

To fulfill this mandate the Select Commission "sought the most reflective, authoritative information from individuals, groups and studies through a variety of methods," including contracting social science and legal research, 12 regional public hearings and site visits across the nation. Consultations were held with experts inside and outside the government, including scholars, representatives from state and local governments, Hispanic and other ethnic organizations, environmental and population groups, international organizations, church organizations, civil liberties groups, organized labor, employees' associations, and immigration lawyers.

After two years of study and deliberation, the Select Commission issued its final report, entitled "U.S. Immigration Policy and the National Interest" on March 1, 1981. The Commission noted that of all the issues related to immigration and refugee policy, the most critical was illegal immigration. The illegal population in the U.S. was estimated to total 3.5–6 million persons in 1978.

The Commission recommended "immediate action" to control illegal immigration and enumerated the key elements of their program:

(1) Increased funding, training, and manpower for border and interior enforcement;

(2) Enactment of legislation making it illegal for employees to hire undocumented aliens; such sanctions would be based on some form of identification verifying employees' eligibility to work in the U.S.;

(3) Increased enforcement of wage and working standards legislation; and

(4) When new enforcement measures have been instituted, legalization of status for certain aliens who had entered the

U.S. before January 1, 1980, and resided here for a minimum period of years which was left for Congress to determine.

The Commission rejected any new temporary worker program in response to illegal immigration, but did recommend improving the existing H-2 program as a means for addressing temporary labor shortages without adversely affecting American workers.

Although the Commission did not reach a consensus as to the specific type of identification that should be required for verification of employment eligibility under employer sanctions laws, they did agree on the principles that should underlie a verification system; reliability, protection of civil rights and civil liberties, and cost effectiveness. They stated that without a verification system, employer sanctions laws, the cornerstone of reducing illegal immigration, would be very difficult to enforce properly;

> [The Commission] acknowledges the criticism leveled at previous employer sanctions legislation on the basis of the vague, and therefore unenforceable, requirement that employers must knowingly hire undocumented workers. It holds the view that an effective employer sanctions system must be based on a reliable means of verifying employment eligibility. Lacking a dependable mechanism for determining a potential employee's eligibility, employers would have to use their discretion in determining that eligibility. The Select Commission does not favor the imposition of so substantial a burden on employers and fears widespread discrimination against those U.S. citizens and aliens who are authorized to work and who might look or sound foreign to a prospective employer. Most Commissioners, therefore, support a means of verifying employee eligibility that will allow employers to confidently and easily hire those persons who may legally accept employment. . . . To be nondiscriminatory, they believe, any employee eligibility system must apply equally to each member of the U.S. workforce—whether that individual be an alien authorized to work in this country or a U.S. citizen.

In terms of legal immigration, the Select Commission concluded that immigration has been and continues to be in the national interest. It recommended a separation of the categories of family reunification and independent immigrants; and continuation of the exemption of immediate family of U.S. citizens from the numerical ceiling; a permanent increase in the annual worldwide ceiling on numerically restricted immigrants, from 270,000 to 350,000, and an additional increase of 100,000 for 5 years to absorb existing backlogs.

The Select Commission's recommendations were reviewed at special joint Congressional hearings and by the Reagan Administration.

REAGAN ADMINISTRATION PROPOSALS

Following the submission of the final report of the Select Commission on Immigration and Refugee Policy on March 1, 1981, President Reagan appointed Attorney General William French Smith to chair a Cabinet-level task force to review the Commission's findings and recommendations and to develop a comprehensive immigration reform strategy.

On July 30, 1981, President Reagan announced the basic provisions of his proposals for immigration and refugee policy reform. Although he pledged that "America's tradition as a land which welcomes people from other countries" would continue, he emphasized that immigrants must be accepted "in a controlled and orderly fashion." The proposals were principally directed toward improving control of general illegal immigration as well as mass arrivals of undocumented aliens claiming asylum.

President Reagan's proposals relating to the general problem of illegal immigration include:

(1) Sanctions against employers of 4 or more employees who knowingly hire illegal aliens, with civil penalties ranging from $500-$1,000 per violation;

(2) Verification of employment eligibility would be based on a combination of existing identification documents which would be required of all American workers at the time of seeking employment;

(3) Legalization of status of otherwise admissible aliens illegally present in the United States as of January 1, 1980, as well as Cubans and Haitians here since January 1, 1981, on a 3-year renewable temporary basis. After 10 years residency (5 years for Cubans and Haitians), such persons could apply for permanent residence provided they demonstrate minimal English proficiency;

(4) A two-year pilot temporary worker program to admit up to 50,000 Mexican nationals to perform jobs lasting 9-12 months in states and occupations where the Governor had certified a shortage of U.S. workers; and

(5) Increased resources for enforcement of existing immigration and labor laws.

President Reagan's proposal to handle future mass arrivals included:

(1) Increased enforcement measures, including legislation to strengthen penalties for the transporting of undocumented aliens to the U.S., to prohibit U.S. residents from traveling to designated foreign countries during Presidentially declared emergencies, and to strengthen existing law relating to the seizure and forfeiture of vessels used in violation of the law;

(2) Interdiction by the Coast Guard of certain vessels, and budget authority for additional detention facilities for undocumented aliens awaiting further legal proceedings;

(3) Legislation to expedite exclusion and asylum proceedings; and

(4) Contingency planning for future mass arrivals by sea.

The President also proposed increasing the annual ceilings for immigration from Canada and Mexico, because of their speical relationship as contiguous neighbors.

Legislation implementing these and other Reagan Administration proposals was introduced on October 22, 1981, as S. 1765/H.R. 4832, the Omnibus Immigration Control Act. This bill was introduced by request by the Chairmen of the Senate and House Judiciary Committees, Senator Strom Thurmond and Representative Peter W. Rodino, Jr., and subsequently referred to the Senate and House Judiciary Committees where hearings were held on the Reagan proposals by the appropriate subcommittees.

97TH CONGRESS

On March 17, 1982, Senator Simpson, on behalf of himself, Senator Grassley, and Senator Huddleston, introduced S. 2222, the Immigration Reform and Control Act of 1982. The bill was a result of the 14 hearings and five consultations held by the Subcommittee on Immigration and Refugee Policy, the recommendations of the Select Commission, and the Reagan proposals. S. 2222 was subsequently examined during the two days of joint hearings with the House Subcommittee on Immigration, Refugees and International Law.

The Subcommittee on Immigration and Refugee Policy favorably reported the bill on May 6, 1982, by a vote of 4 to 0, and the Committee on the Judiciary reported the bill as amended by a vote of 16 to 1, recommending that it be passed by the Senate. 11 amendments were accepted by the Committee on the Judiciary, the most important of which advanced the legalization date, eliminated provisions relating to local law enforcement of immigration laws, and changed the standards for admitting foreign workers under the H2(a) temporary worker program.

The bill was considered on the floor of the Senate on August 12, 13, and 17, 1982. 12 amendments were accepted, the most important of which reinstated the legalization date of January 1, 1980, established a block grant program to reimburse state costs of benefits provided to legalized aliens, required reports on the discrimination and recordkeeping impacts of employer sanctions, and expressed the sense of the Congress that English was the official language of the United States. On August 17, 1982, the Senate passed S. 2222, 80 to 19.

The House Committee on the Judiciary considered its version of the bill, H.R. 5872, on September 14, 15, 16, 21, and 22, 1982, and favorably reported it on September 22, 1982. H.R. 5872 was debated on the House floor on December 16, 17, and 18, 1982. However the bill was not brought to a vote in the House of Representatives in the 97th Congress.

IV. COMMITTEE PROCEEDINGS

Senator Simpson introduced S. 529, the Immigration Reform and Control Act of 1983, on February 17, 1983. The bill was referred to the Subcommittee on Immigration and Refugee Policy.

The Subcommittee on Immigration and Refugee Policy conducted four days of public hearings on the Immigration Reform and Control Act of 1983 on February 24, February 25, February 28, and March 7, 1983.

The Subcommittee on Immigration and Refugee Policy met on April 7, 1983, and adopted several technical and other amendments. By a vote of 4 to 0, the Subcommittee reported the amended bill to the Committee, with the recommendation that favorable action be taken on it.

On April 19, 1983, the Committee on the Judiciary considered and discussed the bill. Several technical and other amendments were considered, as discussed below. On April 19, 1983, by a vote of 13 to 4, the Committee ordered the amended bill reported out with recommendation that it be passed by the Senate.

The following amendments were adopted by voice vote:

1. Kennedy Amendment to authorize the General Accounting Office to report to the Congress each year for five years on the implementation of employer sanctions and their impact on employment discrimination and regulatory burden, and for hearings to be held on such reports. Resources are authorized for the GAO reporting and for the Department of Labor and the Equal Employment Opportunity Commission for enforcement of labor and anti-discrimination laws.
2. Kennedy Amendment to restore the fifth preference for unmarried brothers and sisters.
3. Four technical amendments offered by Senator Simpson.

The following amendments were defeated by roll call vote, as indicated:

1. Biden Amendment (to Kennedy Amendment) to sunset employer sanctions after 8 years.

Yeas (5)	Nays (10)
Specter	Mathias [1]
Biden	Laxalt
Kennedy	Hatch [1]
DeConcini	Dole [1]
Heflin	Simpson
	East [1]
	Grassley
	Denton [1]
	Baucus
	Thurmond

2. Kennedy Amendment to sunset employer sanctions after 5 years.

Yeas (5)	Nays (11)
Specter	Mathias [1]
Biden	Laxalt
Kennedy	Hatch [1]
DeConcini	Dole [1]
Heflin	Simpson
	East [1]
	Thurmond
	Grassley
	Denton [1]
	Baucus
	Metzenbaum [1]

3. Kennedy Amendment to increase the legal immigration ceiling by 40,000.

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[1] By proxy.

Yeas (3)

Kennedy
DeConcini
Leahy[1]

Nays (12)

Mathias[1]
Laxalt
Hatch
Dole[1]
Simpson
East[1]
Grassley
Denton[1]
Specter
Baucus
Thurmond
Heflin

4. Kennedy Amendment to require 5-year review and resetting of the immigration ceiling by the President.

Yeas (1)

Kennedy

Nays (14)

Mathias
Laxalt
Hatch
Dole[1]
Simpson
East[1]
Grassley
Denton[1]
Specter
Biden
DeConcini
Baucus
Heflin
Thurmond

5. Kennedy Amendment to move legalization cut-off date to December 31, 1981.

Yeas (3)

Biden
Kennedy
DeConcini

Nays (12)

Mathias[1]
Laxalt
Hatch
Dole
Simpson
East
Grassley
Denton
Specter
Baucus
Heflin
Thurmond

6. Kennedy Amendment to substitute new asylum adjudication structure.

Yeas (7)

Biden

Nays (10)

Laxalt

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[1] By proxy.

Kennedy
Metzenbaum[1]
DeConcini
Leahy
Heflin
Mathias[1]

Hatch
Dole[1]
Simpson
East[1]
Grassley
Denton[1]
Specter
Baucus
Thurmond

V. SECTION-BY-SECTION-ANALYSIS

Section 1—short title: references in act

Section 1 provides that the short title of the legislation is the "Immigration Reform and Control Act of 1983" and that amendments specified in the legislation are amendments to the provisions of the Immigration and Nationality Act ("INA"), unless otherwise specified.

TITLE I—CONTROL OF ILLEGAL IMMIGRATION

PART A—EMPLOYMENT

Section 101—Control of unlawful employment of aliens

Section 101(a)(1) inserts a new section 274A into the Immigration and Nationality Act, concerning the unlawful employment of aliens. Subsection (a) of that new section makes it unlawful (1) for anyone after enactment to hire, or for consideration to recruit or refer, for employment in the United States an alien who is known to be unauthorized to be so employed or for an employer of four or more employees to hire anyone without complying with the verification procedure described in subsection (b), and (2) to continue to employ an alien lawfully hired after enactment after acquiring knowledge that the alien is not authorized to be so employed. The phrase "for consideration" was inserted to exclude such activities as referrals by friends or recruitment by corporations with respect to their own employees. The phrase "for consideration to recruit or refer" is intended to include the activities of employment agencies, executive search firms, and labor union hiring halls.

This section is intended to be broadly construed with respect to coverage so that, with the kinds of exceptions noted, all employers, recruiters, and referrers are covered: individuals, partnerships, corporations and other organizations, non-profit and profit, private and public, who employ, recruit, or refer persons for employment in the United States.

Subsection (b) of the new section 274A sets forth a procedure for the verification of work eligibility. It requires that an employer with four or more employees attest (under penalty of perjury) on a form approved by the Attorney General that such employer has examined what appears on its face to be either the employee's U.S. passport, or a combination of (i) the employee's Social Security card, United States birth certificate, United States Consular report of birth, a foreign passport or, U.S. Government issued forms for refugees or in the case of asylees or asylee applicants, where the above documentation is not available, other documentation acceptable to the Attorney General, and (ii) an identification document, such as an alien documentation, identification, and telecommunication (ADIT) card, driver's license or other state identification card, or (for those under 16 and in States that do not issue identification documents) a reliable personal identify document which has been approved by the Attorney General. It also requires the employee to attest on such form that the employee is a citizen or permanent resident alien, or is otherwise authorized to be so employed. The employer is required to retain the completed form, and make it available for inspection by the Immigration and Naturalization Service, for five years or one year after the date the employment is terminated, whichever is later. The exclusion of recruiters and referrers from the requirements of this section was intended to prevent duplicative recordkeeping. The ultimate employer would keep records on any employee actually hired. The exclusion of small businesses was also intended to avoid undue burden on the smallest businesses, which are estimated to represent 50 percent of employers while only 5 percent of employees. The provision for a penalty for merely failing to comply with the verification procedure, even if the applicant were a U.S. citizen, is designed to make it less likely that an employer will discriminate by requiring verification only of those he believes "look or sound foreign."

Subsection (c) of the new section requires the President, within 3 years, to implement such changes in or additions to the requirements of subsection (b) as may be necessary to establish a secure system to determine employment eligibility. The system must reliably verify that an applicant is the person he claims to be and that such a person is eligible to work. If the new system will involve examination by an employer of any document, the bill requires that such document be in a form which is resistant to counterfeiting and tampering, unless the President and the Judiciary Committees of Congress agree that such form is unnecessary to the reliability of the system. The Committee intends that the phrase "form which is resistant to counterfeiting and tampering" be interpreted to mean a form specially designed to be so resistant, through the use of fine engraving, special material, magnetic or other coding, or otherwise. Personal information in the system would be made available only to the extent necessary to verify that the individual is authorized to be employed. Such verification could only be withheld because the individual was an alien not authorized to be employed. The system may not be used for law enforcement, other than as related to enforcement of the new section or the provisions relating to fraudulent use of documents. If the system were to involve presentation of a document or card designed specifically for use under the verification system, it could not be required to be presented for any other purpose (except in the course of enforcing the law against fraudulent use of documents) or to be carried on the person.

Subsection (d)(1) of the new section provides graduated penalties for the knowing employment, or recruitment or referral for consideration, of unauthorized aliens: a civil penalty of $1,000 for each alien for the first violation, a civil penalty of $2,000 for each alien for the second or a subsequent violation, and a misdemeanor (criminal) penalty of a $1,000 fine, six month imprisonment, or both, for a pattern or practice of violation.

Many business entities are composed of separate subdivisions each of which does its own recruiting and hiring. This section fixes employment responsibility on the entity exercising final management authority over such recruiting and hiring. The Committee intends "final management authority" to mean final, direct, operational control over the day-to-day hiring and employment practices of the separate entity.

Subsection (d)(2) authorizes the Attorney General to bring a civil action to enjoin persons engaging in a pattern or practice of employment, recruitment, or referral in violation of subsection (a). It is expected that the requirements of this section will for the most part be voluntarily complied with, but selective enforcement actions by the Attorney General will assure even greater compliance.

Subsection (d)(3) provides for a civil penalty of $500 for each instance in which an employer fails to comply with the verification and recordkeeping requirements of subsection (b).

Subsection (d)(4)(A) provides that before assessing a civil penalty against a person or entity the Attorney General must provide the person or entity with notice and the opportunity to request a hearing before an immigration officer (not necessarily an immigration judge) designated by the Attorney General. The Committee intends that the provisions of the Administrative Procedure Act (APA) not apply to such hearings. Subsection (d)(4)(B) provides that if a person fails to pay a civil penalty, the Attorney General may sue in Federal district court to collect the amount due. The court will decide the suit based solely on the administrative record developed in the case and will accept the findings of fact of the Attorney General if supported by substantial evidence in the administrative record considered as a whole.

Subsection (e) of the new section requires that in any documentation of an alien's authorization of employment the Attorney General shall conspicuously indicate any limitations on such authorization.

Subsection (f) of the new section provides that the provisions of this section preempt State and local laws providing civil or criminal sanctions for employment, or recruitment or referral for employment, of aliens not authorized to be employed.

Subsection (g) requires the President to monitor the implementation of this section both in terms of the development of the more secure verification system, and the impact on the marketplace, on employment in the United States of aliens and of citizens and nationals of the United States, and on the flow of illegal aliens into the United States. It is one of a number of continuing reports required to assure that this section is carefully monitored and that the public and the Congress may be made aware of any undesirable impacts, including discrimination during the course of the implementation program.

Section 101(g)(B) (i) and (ii) provide that, although the requirements of Section 274A take effect immediately, during the first six months notice will be given as to apparent violations of these provisions, but no penalty shall be assessed, and during the subsequent six month period the first offense will result only in a warning.

Section 101(g)(c)—During the first year after enactment, the Attorney General, in cooperation with the Secretary of Commerce, the Secretary of Labor, the Secretary of Agriculture, and the Administrator of the Small Business Administration, is required to disseminate forms and information to employers, employees, and the public concerning these requirements.

Section 102—Fraud and misuse of certain documents

Section 102(a) amends 18 U.S.C. 1546 by (1) extending the criminal penalties for the use, manufacture, or sale of counterfeit or altered entry documents or those relating to another individual to include all other documents which may be used to show employment eligibility or to obtain documents which may be so used and (2) increasing the fine for this violation from $2,000 to $5,000 (without changing the potential imprisonment of five years).

Section 102(b) makes it unlawful to photograph or to sell, transfer or distribute any document to be used in connection with satisfaction of any provision of the Immigration and Nationality Act, or regulations thereof, including specifically, the adjustment of status provisions in connection with the legalization program. It extends the criminal penalties, which are authorized in connection with illegal entry to other sections of the Act.

The Committee expects that the amendments regarding the production, sale, and use of fraudulent documents provided by Section 102 will be used to prosecute purveyors of fraudulent documents and aliens using fraudulent documents to obtain unauthorized employment. The Immigration and Naturalization Service should also pursue prosecution for fraud against applicants for legalization who utilize fraudulent documents.

PART B—ENFORCEMENT AND FEES

Section 111—Immigration and Naturalization Service enforcement activities

Section 111 expresses the sense of Congress that an increase in Immigration and Naturalization Service border patrol and other enforcement activities is a critical element of the overall immigration proposal contained in the legislation, and that this increase will be appropriately monitored and effected through the annual authorization of appropriations process.

Section 112—Unlawful transportation of aliens to the United States

Section 112 amends the provisions of the INA respecting criminal penalties for bringing in and harboring aliens. First, it eliminates the present provision (the so-called "Texas Proviso") which prevents employment from being deemed to constitute harboring an alien. By eliminating the "Texas Proviso" the Committee does not intend that employment in itself would constitute "harboring."

Second, the section adds a new provision which makes it a criminal offense (subject to a minimum fine of $2,500 and up to one year's imprisonment, with additional penalties for a second offense or in aggravated circumstances) to bring an unauthorized alien to the United States, without regard to whether or not the entry was fraudulent, evasive, or surreptitious. This provision is intended to reverse the judicial construction of section 274 of the INA in *Anaya* v. *United States*, 509 F. Supp. 289 (S.D. Fla. 1980).

Section 113. This section amends Section 275 of the Immigration and Nationality Act to establish that it is unlawful to *attempt* to enter as well as to enter the United States without inspection or by fraud.

Section 114—Fees

Section 114 requires the Attorney General to impose fees for an alien's use of border or other Immigration and Naturalization Service facilities in an amount commensurate with the cost of maintenance and operation of these facilities.

PART C—ADJUDICATION PROCEDURES AND ASYLUM

Section 121—Inspection and exclusion

Section 121(a). This section clarifies that the inspection and exclusion procedures are to be utilized not only at the normal ports of entry where the alien normally arrives by air or by sea, but also at the land borders.

Section 121(b) amends the INA to provide that if an immigration officer at the port of entry determines that an alien does not have the documentation required for entry, does not have any reasonable basis for legal entry, and has not applied for asylum, such alien must be summarily excluded from entry into the United States, without any hearing or further inquiry. If the alien claims asylum, the exclusion hearing is limited to the asylum issue.

This section also requires the Attorney General to establish a procedure to assure that this summary exclusion procedure is not used with respect to an alien unless some inquiry has been made into such alien's reason for unlawfully seeking entry into the United States. It is the intention of the Committee that this be a general inquiry and should not include advice of any right to claim asylum or leading questions with respect to persecution.

Questions of following character indicate the nature of the inquiry the Committee intends: Why are you seeking to enter the United States? Is there any reason why you could not be returned to your native country or to the country from which you came?

Only if the alien's answers to such general inquiry provide evidence that the alien may have a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion should the immigration officer specifically inquire about persecution and the alien's desire to claim asylum.

Section 122—United States Immigration Board and establishment of Immigration Judge System

Section 122(a) adds a new section 107 to the INA, providing for a United States Immigration Board and the use of immigration judges who will be within the Department of Justice.

The statutory provision is intended to upgrade the existing structure and provide increased independence, authority, and stature. It continues in the new Board the jurisdiction of the present Board of Immigration Appeals.

Subsection (a) of the new section provides that the Board shall be composed of a chairman and eight other members appointed by the Attorney General. Flexibility of appointment is permitted so that the Attorney General may appoint qualified members of the bar who may not have immigration experience. This will expand the pool from which Board members are selected. Members will have staggered terms of six years, and are given Civil Service protection. They will be compensated at the rate for GS-17 (GS-18 in the case of the chairman). The chairman will be responsible for administrative operations of the Board and promulgating rules of practice and procedure for the Board and the immigration judges.

Subsection (b) of the new section provides for the Board's authority to hear and determine appeals from final decisions if immigration judges, decisions relative to review of the exercise of discretionary authority and the imposition of administrative fines, although not necessarily civil penalties imposed under Title I of this Act, petitions for family reunificaiton, bond, parole, and detention determinations and such other jurisdiction as the Attorney General may authorize by regulation. In hearing appeals, the Board will act in panels of 3 or more members designated by the chairman, except that individual members will be able to decide nondispositive motions and the Board may decide in appropriate cases to act *en banc*. The Board shall review the decisions of immigration judges based on the administrative record and will not change a finding of fact if it is supported by substantial evidence in the record considered as a whole. The Committee intends that the provisions of the Administrative Procedure Act (APA) not apply to Board adjudications. The Board's final decisions will be binding on all immigration and consular officers, unless otherwise modified or reversed by a court or by the Attorney General. If the Attorney General determines it to be necessary for the national interest, the Attorney General will be able, within 30 days of the final decision of the Board, to provide that the case be certified for him to review. If he does not render a decision within 30 days, the decision of the board shall be considered final and not be subject to further review by the Attorney General.

Subsection (c) of the new section provides for the Attorney General to appoint immigration judges, to set their rate of compensation (not to exceed GS-16), and to designate a chief immigration judge (to be compensated at the GS-17 rate). The number of immigration judges has not been fixed in order to provide flexibility to the Attorney General. The chief immigration judge will be responsible for administrative activities affecting immigration judges and shall assign judges to hear cases. The immigration judges will hear exclusion (other than summary exclusion), deportation, suspension of deportation, rescission of adjustment of status, and asylum cases. In hearing the cases, the judges will be authorized to administer oaths, determine applications for discretionary relief, and exercise such of the Attorney General's discretionary authority as the Attorney General delegates to them in order to effect a just and equitable disposition of cases before them. The Committee intends that the provisions of the Administrative Procedure Act (APA) not apply to adjudications by immigration judges.

Section 122(b) provides that aliens will have 15 days in which to appeal to the U.S. Immigration Board from decisions of the immigration judges.

Section 122 (c) and (d). These two subsections amend Section 242 of the INA gain greater control over the deportation process. It changes the standard for a deportability decision from "reasonable, substantial and probative" to the more normal administrative standard of "substantial." It further amends Section 242 by providing that the burden of proof requirement upon the Attorney General is to establish deportability by a preponderance of the evidence (following normal civil procedure). It is intended to reverse the standard set forth in *Woodby* v. *United States,* 385 U.S. 276 (1966) of "clear, unequivocal and convincing evidence."

Section 123—Judicial review

Section 123(a) amends the existing provisions of section 106(a) of the INA concerning judicial review to (A) require that judicial review be sought within 45 days (rather than 6 months) of the date of a deportation order, (B) eliminate court review of the issue of asylum, and (C) eliminate statutory habeas corpus review of custody in deportation proceedings.

Section 123(b) provides that there shall be no judicial review of exclusion or asylum orders, except as is available under the constitutional right to seek a writ of habeas corpus. The section also prohibits courts of the United States from reviewing Board or immigration judge decisions with respect to the reopening or reconsideration of exclusion, deportation, or asylum determinations; the Attorney General's denial of stays of exclusion or deportation orders; or summary exclusion. This section also provides that if the Attorney General reverses or modifies the Board's decision under INA section 107(b)(5)(B), as added by this bill, then judicial review is provided to the same extent as in the case of a final order of the Board on deportation, as provided in INA section 106(a) (an appeal to a circuit Court of Appeals, which may not reverse any finding of fact supported by substantial evidence).

Section 123(f) provides that an action for judicial review of any administrative action, other than a final order of deportation, must be filed within 30 days of the final administrative action, or of the date of enactment, whichever is later.

Section 124—Asylum

Section 124(a) amends section 208(a) of the INA respecting applications and hearings on asylum. The provisions establish a statutory procedure under which aliens make application for asylum.

Under paragraph (1) an alien in deportation or exclusion proceedings may not file a notice of intention to apply for asylum more than 14 days, nor complete the application more than 35 days, after the date notice of the proceeding was served unless such alien can make a clear showing that there have been changed circumstances in the country of the alien's nationality since the date the proceedings began. Aliens previously denied asylum cannot apply again unless they can show such changed circumstances since the date asylum was previously denied.

Under paragraph (2) asylum applications are considered before immigration judges who have been specially designated by the United States Immigration Board, who have had special training in international relations and international law. This requires the Attorney General to provide special training in international relations and international law to the present immigration judges in order to qualify such individuals to hear applications for asylum. Upon enactment of the statute no further asylum cases may be assigned to immigration judges until such training has taken place.

Under paragraph (3) asylum herings are closed to the public unless the applicant requests otherwise. To the extent practicable the hearing shall be conducted in an informal, nonadversarial atmosphere, except that the applicant is entitled to be assisted by counsel without charge to the government or unreasonable delay, to present evidence, and to examine and cross-examine witnesses. A complete record of the hearing is maintained. The judge's determination must be solely on the evidence produced at the hearing. The Committee intends that the provisions of the Adminstrative Procedure Act (APA) not apply to asylum adjudications.

The new section also provides that the Secretary of State shall, on a continuing basis and without reference to individual applications, make available to the Attorney Gneral reports on the condition of human rights in all countries. These country profiles will provide to the immigration judge who adjudicates the asylum application the necessary information on the country where the applicant claims to fear persecution. It is expected that reports by the Secretary of State relating to whether or not persons in such country who are of the same race, religion, nationality, social group, or political opinion as the applicant are generally subject to persecution because of such characteristics, will be determinative unless the applicant presents evidence that he would be treated differently from such persons.

The Attorney General is to notify the Secretary of State of individual asylum claims so that the Secretary of State may comment if he wishes. Immigration judges are directed not to delay the hearing in order to receive comments from the Secretary of State, nor is the Secretary of State under any obligation to comment on any individual case. The Committee expects that procedures and criteria for the separate notification of the Department of State concerning certain categories of asylum cases will be developed by the Attorney General, in consultation the Secretary of State, and set forth in regulations.

Paragraph (4) provides that the Attorney General may, in his discretion, grant asylum only if the immigration judge determines that the alien meets the definition of "refugee," as defined by INA section 101(a)(42), and does not meet one of the conditions set forth in INA seciton 243(h)(2), such as having participated in the persecution of others, having been convicted of a serious nonpolitical crime, and being a danger to the security of the United States (grounds which would permit return, or *refoulment,* of the alien to the country of origin under the Protocol Relating to the Status of Refugees, ratified by the U.S. Senate in 1968). Furthermore, the Committee intends that aliens within a class described in INA section 212(a) would not be granted asylum, subject to the same exceptions set forth in INA section 207(c)(3) for the admission of refugees. This section does not change existing law that the Attorney General is not required to grant asylum. However, deportation of aliens denied asylum is subject to the treaty obligations of the United States under the Protocol and the provisions of INA section 243(h) (see discussion of Sec. 124(b) below). Such treaty obligations require that the United States not return an alien to a country where his "life or freedom" would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion. Therefore, where the "persecution" involved is not so severe as to threaten life or freedom, or where the applicant can be deported to a country other than his country of nationality without such severe persecution, then the Attorney General may deport the alien.

Under paragraph (5), the applicant has the burden of establishing eligibility for asylum.

Paragraph (6) prohibits the reopening of an asylum application without a clear showing that there have been changed circumstances since the date of the previous determination.

Section 124(a)(2) amends section 208(b) of the INA to clarify that the Attorney General can terminate asylum if one of the conditions described in INA section 243(h)(2) is met.

Sections 124(a)(3) amends section 208 to clarify that the procedures in that section are the exclusive procedures for claiming asylum.

Section 124(b) provides that an application for relief under INA section 243(h) shall also be considered to be an application for asylum under section 208. The Committee does not intend, however, to change the mandatory nature of relief under INA section 243(h). Although, as already indicated, a grant of asylum under INA section 208 is a matter of discretion in the Attorney General, aliens denied asylum could not, with certain exceptions, be deported or returned to any country where such alien's life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion. This does not prevent the alien from being deported to some other country as provided in INA section 237(a) or 243(a), if the threat does not exist in such other country.

Therefore, the Committee intends that the immigration judge adjudicating the application will determine:

(1) whether or not the applicant satisfies the definition of "refugee" and may otherwise be considered for the discretionary granting of asylum by the Attorney General under INA section 208, and

(2) if the applicant is denied asylum, whether or not the applicant qualifies for the mandatory relief of INA section 243(h). Either or both of these determinations are appealable to the United States Immigration Board.

Section 125—Effective dates and transition

Section 125(a) provides that the general rule that the amendments made by part C of Title I of the bill take effect upon enactment, with certain exceptions. Such exceptions are as follows: the changes in adjudication and asylum procedures (*other than* those relating to summary exclusion (§ 121), the modification of the standard of proof in administrative deportation proceedings (§ 122(c) and (d)), the reduction of the time period for filing deportation appeals (§ 123(a)(2)), the modification of the standard for judicial review of evidence in deportation cases (§ 123(a)(5)), the striking out of language permitting habeas corpus review of custody in all deportation cases (§ 123(a)(9)), and the requirement that INA section 243(h) claims be adjudicated in INA section 208 under asylum procedures (§ 124(b)) do *not* apply with respect to exclusion and deportation cases begun before the "hearing transitional date" established pursuant to § 126(c)(1)(A) or asylum applications filed before the "asylum transition date" established pursuant to § 126(c)(1)(B). However, certain new provisions relating to asylum (namely, certain provisions restricting asylum claims (§ 208(a)(1)(B) of INA), establishing rights of the asylum applicant at the hearing (§ 208(a)(3) of INA), standards for determination of asylum (§ 208(a)(4) of INA), restrictions on reopening asylum determinations (§ 208(a)(6) of INS), and adding a basis for terminating asylum (§ 208(b)(2)) apply to pending asylum claims with appropriate transition provisions to take into account hearings previously begun and the fact that special inquiry officers will continue (until the "asylum transition date") to handle asylum claims. The section also permits immigration judges to succeed special inquiry officers in cases before those dates.

Section 125(b) requires the Attorney General to appoint the chairman and other members of the U.S. Immigration Board within 45 days after enactment, in order to provide for an expeditious transition to the new adjudication procedures. Within 45 days of the date the chairman and a majority of the Board has been appointed, the chairman, in consultation with the Attorney General, is required to select a date for the U.S. Immigration Board to assume and continue present functions of the Board of Immigration Appeals. The chairman is then required to promptly provide for the interim rules of practice under the new system. No later than 60 days after the promulgation of such interim new rules, the Attorney General is required to appoint at least 10 asylum judges, who will receive special training under the supervision of the U.S. Immigration Board.

Section 125(c) provides for the designation by the U.S. Immigration Board, in consultation with the Attorney General, of transition dates for the new adjudication and asylum procedures. The "hearing transition date" is to be within 45 days of the date the interim final rules of practice are promulgated, and the "asylum transition date" is an appropriate date after the new interim final rules for asylum procedures have been issued and a sufficient number of specialized asylum judges have been appointed and trained. Before these dates, newly appointed immigration judges may conduct any proceeding or hearing now conducted by a special inquiry officer under the existing rules applicable to special inquiry officers.

Section 125(d) permits present special inquiry officers to serve as acting immigration judges (other than in asylum proceedings) for two years after the hearing transition date. If they are not subsequently appointed to the U.S. Immigration Board or as immigration judges, they shall be credited (for such purposes as seniority) with having been employed in the Department of Justice as special inquiry officers during such period.

Section 125(e) acts as a saving clause for existing cases and permits the U.S. Immigration Board and immigration judges to serve as a continuation of the Board of Immigration Appeals and special inquiry officers, respectively.

Section 125(f) requires the Attorney General to maintain in grade for at least one year after termination of the BIA present members of the BIA, if they have previously served for 3 years as such, are not appointed as members of the U.S. Immigration Board or as immigration judges, and continue to be employed by the Department of Justice.

Section 126—Technical and conforming amendments

Section 126 makes various technical and conforming changes to reflect (1) changes in reference from "special inquiry officer" to "immigration judge" and from "further inquiry" to "an exclusion hearing", and (2) the transfer of certain authority from the Attorney General to the U.S. Immigration Board or its chairman.

PART D—ADJUSTMENT OF STATUS

Section 131—Limitations on adjustment of nonimmigrant to immigrant status by visa abusers

Section 131(a) amends section 245(c)(2) of the INA to provide that aliens who have failed to maintain continuously a legal status since entry in the United States will not be eligible to adjust from nonimmigrant to immigrant status within the United States. The present statutory provision prohibits such adjustment only if a nonimmigrant has failed to maintain legal status because of unauthorized employment.

It is the intention of the Committee to make adjustment of status a much less frequently used method of permanent entry into the United States. It is expected that the Administration will continue to implement immigration entry as before and not make special provisions for the obtaining of visas in border countries.

Section 131(b) clarifies that this change applies to applications already filed, but not yet acted upon.

Section 141—Burden of proof

This section amends Section 291 to require an alien in a deportation proceeding, who must prove his right to be in the country, to identify himself correctly by name and nationality. The purpose of this is to permit immigration judges and the judiciary to have before them as much evidence as possible on this critical point so they can make an accurate determination as to the alien's right to be present in the country.

TITLE II—REFORM OF LEGAL IMMIGRATION

PART A—IMMIGRANTS

Section 201—Numerical limitations

Section 201(a) amends section 201(a) of the INA to provide a new limit on the aliens who may receive immigrant visas or otherwise acquire the status of aliens lawfully admitted for permanent residence. Other than "immediate relatives" of U.S. citizens (spouses, children, and parents of adult citizens), "special immigrants" defined in INA section 101(a)(27), refugees, asylees, and certain other special categories, new permanent residents are limited to the groups:

(a) family reunification preference immigrants, in a number equal to 350,000 minus the number of "immediate relatives" and aliens in certain other small categories admitted with or otherwise acquiring permanent resident status in the prior year, plus the independent preference and nonpreference visa numbers (see next paragraph) not used in the prior year;

(b) independent preference and nonpreference immigrants, in a number equal to 75,000 minus the number of "special immigrants" (other than returning permanent residents) and aliens in certain other small categories admitted with or otherwise acquiring permanent resident status in the prior year, plus the family reunification preference visa numbers not used in the prior year.

Section 201(b) amends section 202(a) of the INA to provide that except for the contiguous countries of Mexico and Canada, the ceiling on preference immigrants from a single country will be 20,000 minus the number of "immediate relatives," "special immigrants," and aliens in certain other small numerically unlimited categories admitted with or otherwise acquiring permanent resident status in the prior year in excess of 20,000. For example if in 1983 the number admitted in such categories from a particular country totaled 25,000, then in 1984 the ceiling on preference immigrants from such country would be 15,000 (20,000 minus the 5,000 excess of 25,000 over 20,000). This would not in any way affect the number of "immediate relatives" or aliens in other numerically unlimited categories which could be admitted from that country in 1984. However, any excess over 20,000 would be subtracted from 20,000 in order to obtain the ceiling for preference immigrants in 1985.

The per-country ceiling for Mexico and Canada are increased to 40,000 each, minus such excess of "immediate relatives," etc. over 20,000 in the prior year. In addition, either country will be entitled to the unused visa numbers of the other country from the prior year. For example, if in 1983, 10,000 preference immigrants were admitted from Canada, and 40,000 from Mexico and neither country sent "immediate relatives," etc. in excess of 20,000, then in 1984 the ceiling on preference immigrants from Mexico would be 70,000 (40,000 plus the excess of Canada's permitted 40,000 over its actual 10,000) and the ceiling on those from Canada would again be the base 40,000. If, instead, in 1983 25,000 "immediate relatives" entered form Mexico and the other figures were the same, then Mexico's preference ceiling would be 65,000 (70,000 minus the "immediate relative" excess of 5,000 over 20,000).

Section 202—Preference allocation systems

Section 202(a) amends the provisions of section 203 of the INA relating to the preference categories. Instead of the present 7-tier preference and nonpreference system, incorporating both family reunification and employment-related categories, there are established separate preference groups for family reunification immigrants and for independent immigrants.

Under the family reunification group of preference categories, visas are first made available for unmarried sons and daughters of U.S. citizens, in a number up to 15 percent of the annual numerical limitation in INA section 201(a)(1), plus any numbers not used for the fourth preference (see below). This corresponds to the present first preference.

Second, visas are made available for (i) spouses and children of aliens lawfully admitted for permanent residence and (ii) those unmarried sons and daughters over 21 years of age who had received approval of petitions for the present second preference on or before May 27, 1982 and who, at the time of application for admission, still qualify under the present second preference standards. The ceilings is 65 percent of the annual numerical limitation, plus any numbers not used for the first family preference. The present second preference includes all unmarried sons and daughters, whether adults or children. The increase in the percentage available for this preference was in part designed to meet the expected demand in this preference arising from the legalization program. The elimination of unmarried sons and daughters over 21 reflects the Committee's view that the limited visas available for this preference should be used to reunite "nuclear families."

Third, visas are made available for married sons and daughters of U.S. citizens in a number up to 10 percent of the annual numerical limitation, plus any numbers not used for the first or second family preference. This corresponds to the present fourth preference.

Fourth, visas are made available for individuals who on or before the date of enactment had a petition filed in his behalf for the present fifth preference status (brothers and sisters of adult U.S. citizens) and who, at the time of application for admission, still qualify under the present fifth preference standards. The bill continues the fifth preference for unmarried brothers and sisters. The ceiling is 10 percent of the annual numerical limitation, plus any numbers not required for the previous preference categories. The ceiling is 10 percent of the annual numerical limitation, plus any numbers not required for the previous preference categories. The abolition of the fifth preference after March 1, 1982 is intended to enable additional visas to be provided to the independent and other family reunification categories. Furthermore, the backlog of active petitions for this category at consular offices abroad is now nearly 700,000, over three times the level in 1978. Less than half are the brothers and sisters themselves. The rest are the spouses and children of such brothers and sisters.

Under the independent group of preference categories, visas are first made available to aliens who are members of the professions holding doctoral degrees or equivalent terminal degrees or aliens of exceptional ability in the sciences, arts or business, up to the amount of the annual limitation in INA section 101(a)(2). This corresponds to the existing third preference except that it includes business on the list of fields in which exceptional ability qualifies an alien for a special preference and provides that exceptional ability is also required for members of the professions and that possession of a degree or similar award from a school or a license to practice a profession is not in itself sufficient to establish exceptional ability. Authority is granted to the Attorney General to waive with respect to aliens in this category the portion of the labor certification requirement relating to a job offer. This recognizes the fact that many persons of exceptional ability will be independent contractors, not employees.

Second, visas not allocated to the first category are made available to skilled workers. This corresponds to part of the existing sixth preference.

Third, visas not allocated to the first two categories (and not in excess of 10 percent of the independent immigrant annual numerical limitation) are next made available to alien investors who have invested or shown an intent to invest substantial capital (in an amount to be set by the Attorney General, but not less than $250,000) in an enterprise of which the alien will be a principal manager and which will create at least four full-time jobs for U.S. citizens or permanent residents, other than relatives of the investors. *Section 202(d) amends* section 241(a)(9) of the INA to provide for deportation of aliens who enter the United States as investors but fail to invest or maintain for one year the substantial investment required.

Fourth, visas are made available to other qualified immigrants in the chronological order in which they qualify.

All independent immigrant visas except for the third (investor) category require a labor certification, as describeed in INA section 212(a)(14). A waiver of the job offer portion of the labor certification for immigrants under the first (exceptional ability) independent category may be granted by the Attorney General pursuant to the provisions of INA section 212(d)(11), as added by the bill.

A new section 203(c) of the INA provides that where the number of qualified immigrants from a particular country is greater than the per-country ceiling, to the degree practicable and without limiting the number of preference immigrants from such country to a level below that which is permitted by the per-country ceiling in effect, visas should be allocated so that the ratio of family reunification immigrants (including immediate relatives and fiances) to independent immigrants (including special immigrants) equals 4.65 to 1. This ratio represents the worldwide allocation of 350,000 family reunification visas and 75,000 independent visas and serves to assure within countries the kind of mixture which is provided under current section 202(e) of the INA, which is repealed by section 202(b) of this Act.

Section 203—Labor certification

Section 203 amends section 212(a)(14) of the INA to provide several changes in the labor certification process. These changes include (1) clarifying that the Secretary of Labor must consider the availability of workers throughout the United States, rather than only at the place where the labor will be performed; (2) requiring that certification must include a finding that sufficient workers in the United States could not be trained within a reasonable period of time; (3) authorizing the Secretary of Labor to use general labor market information in considering the certification, rather than only an analysis of the impact of the specific alien in the specific job; (4) providing that certification decisions of the Secretary of Labor, including the use of general labor market information, cannot be overturned by a court except on the basis of compelling evidence that the decision was arbitrary and capricious; and (5) authorizing the Attorney General to waive the requirement of a job offer with respect to an alien seeking to obtain the status of an immigrant under section 203(b)(1) of the INA.

Section 204—G–iv special immigrants

Section 204(a) adds a new category of "special immigrant" to those already included in INA section 101(a)(27). This category would include an immigrant who is the unmarried son or daughter of an officer or employee, or former officer or employee, of an international organization such as the U.N. or World Bank, if such immigrant (i) while in the status of a nonimmigrant under INA section 101(a)(15)(G)(iv) or 101(a)(15)(N) has resided and been physically present in the U.S. within the 7 year period prior to the date application for the visa or for adjustment to special immigrant status is made and for at least 7 years (in the aggregate) between the ages of 5 and 21 and (ii) applies no later than his 25th birthday or 6 months after enactment, whichever is later.

Special immigrant status is also provided to the surviving spouse of an officer or employee of such an international organization who (i) while in G–iv or N status has resided and has been physically present in the United States as such a spouse within the 7 year period prior to the date application for the visa or for adjustment to special immigrant status is made and for at least 15 years (in the aggregate) before the death of his or her spouse, and (ii) applies no later than 6 months after the spouse's death or 6 months after enactment, whichever is later.

Finally, special immigrant status is provided to a retired officer or employee of such an international organization who (i) while in G–iv or N status has resided and been physically present in the U.S. within the 7 year period prior to the date application for the visa or for adjustment to special immigrant status is made and for at least 15 years (in the aggregate) before the date of his retirement from such organization, and (ii) applies no later than 6 months after such retirement or 6 months after enactment, whichever is later. The spouse of such a retired officer or employee who receives special immigrant status, who is accompanying or intending to join such retired officer or employee as a member of his immediate family also will receive special immigrant status.

With respect to the "physically present" requirement, the Committee intends that an absence caused by the need to inspect overseas projects and a customary leave shall not be subtracted from the required aggregate period of physical presence, provided that the immigrant continues to reside in the U.S. during such absences and continues to have his duty station in the United States and, with respect to an immigrant who is the unmarried son or daughter of an officer or employee, provided that the unmarried son or daughter is not enrolled in school outside the U.S. during such absences.

Section 204(b) amends sections 101(a)(15) of the INA to create a new "N" nonimmigrant status for (i) parents of children who are given special immigrant status, while the qualifying children are minors, (ii) the other children of such parents and the children of surviving spouses or retired officers or employees given special immigrant status. The Committee intends that parents receiving such nonimmigrant status will receive work authorization.

Section 205—Effective dates and transition

Section 205(a) sets the effective date for sections 201, 202, and 203 as October 1, 1984. The provisions of section 204 take effect upon enactment.

Section 205(b) provides a transition rule whereby aliens who have filed preference petitions before the effective date will have their petitions considered under the corresponding new preference categories, with the same priority dates that they had previously if they still qualify (in some cases the categories under the new preference system do not correspond precisely to the categories under the old preference systems. Furthermore, if the circumstances of the alien change, for example if he marries or if his U.S. relative dies, he may no longer qualify for the preference).

PART B—NONIMMIGRANTS

Section 211—H-2 workers

Section 211(a) amends the nonimmigrant worker provision to distinguish temporary agricultural labor or services (class (a)) from other temporary services or labor (class (b)).

Section 211(b) amends the procedure for obtaining approval of H-2 petitions. Under the new procedure aliens can be admitted to perform temporary agricultural labor and services for no more than 8 months in any calendar year, except in the case of agricultural labor or services or which the Secretary of Labor recognized before enactment that longer periods were required, which may exceed one year.

The exception allowing admission for perids longer than one year pertains to the particular historical case of the sheep-raising industry. Aliens have been admitted under the H-2 provisions of the Act to work as range sheepherders since 1958. They have been allowed to stay for three-year periods without mandatory return to their country of origin. This provision will allow the continuation of that practice under the new law.

In addition, a petition for any kind of H-2 worker cannot be approved unless the petitioner has applied for a certification from the Secretary of Labor that (i) there are not sufficient workers who are able, willing, qualified, and who will be available at the time and at the place needed to perform the required labor and (ii) the employment of aliens will not adversely affect the wages and working conditions of workers similarly employed in the United States. The requirement that in every case employers must make a nationwide recruitment and hiring effort has been deleted as excessively burdensome and because it is not currently required by the Department of Labor. However, the Committee intends that in making its certification decision with respect to particular employment, the Department of Labor will continue to consider U.S. migrant workers and U.S. citizens from Puerto Rico who are "able, willing, qualified and available" workers for such employment. The requirement that the employment of aliens not adversely affect the wages and working conditions of workers similarly employed in the United States is not intended to require the Department of Labor to change its existing practice of determining adverse effect wage rates on a state-by-state basis. The Secretary of Labor may charge an application fee covering the reasonable costs of processing the application.

The Secretary of Labor may not approve a labor certification with respect to an alien who entered as a temporary worker during the previous five years and violated the terms of such previous admission or for an employer if such employer during the previous two years violated an essential term or condition of a labor certification or did not pay a penalty for such violations, as assessed by the Secretary of Labor. However, such an employer may not be denied certification for more than one year for any such violation.

In addition, the Secretary may not approve a certification for an employer if there is a strike or lock-out in the course of a labor dispute which under the regulations precludes such certification. Current regulations promulgated by the Department of Labor state:

> 20 CFR Sec. 655.203(a): *Assurances.* As part of the temporary labor certification application, the employer shall include assurances, signed by the employer, that:
>
> (a) The job opportunity is not:
>
> (1) Vacant because the former occupant is on strike or being locked out in the course of a labor dispute; or
>
> (2) At issue in a labor dispute involving a work stoppage.

Furthermore, current regulations promulgated by the Immigration and Naturalization Service state:

> 8 CFR Sec. 214.2(h)(10): *Effect of labor dispute involving a work stoppage or layoff of employees.* A petition shall be denied if a strike or other labor dispute involving a work stoppage of employees is in progress in the occupation and at the place of beneficiary is to be employed or trained; if the petition has already been approved, the approval of the beneficiary's employment or training is automatically suspended while such strike or other labor dispute is in progress.

It is the Committee's view that the regulations of the Immigration and Naturalization Service and the Department of Labor now in force with respect to strikes and lockouts together establish appropriate standards. If such regulations are changed, the statutory reference to "regulations" is to be interpreted to refer to the new regulations.

The Attorney General is required to provide for such procedures for the entry and exit of H-2 workers as may be necessary to carry out this section.

The section also provides that employers are not required to file for temporary agricultural workers more than 80 days before the labor or services are required.

The Secretary of Labor is directed to make the certification at least 20 days before the date such labor or services are required if the employer has complied with the criteria for certification and if the employer has not found or been referred qualified individuals who have agreed to perform the needed labor or services on the terms and conditions of a job offer approved by the Secretary of Labor.

The petition or the application for certification may be filed by an association representing agricultural producers. It is the Committee's intent that the H-2 program be both expeditious and fair. In order to improve efficiency, therefore, associations comprised of bona fide agricultural employers may file single petitions for needed foreign workers. Nevertheless, in order to maintain the fairness of the program, individual employers must remain liable for representations made in obtaining foreign workers. The association is liable only if the association, rather than the individual employers, is the sole employer of all foregn agricultural workers.

The Secretary of Labor is required to establish an expedited procedure for review of denials of labor certification, or, at the applicant's request, a de novo administrative hearing. Furthermore, the Secretary of Labor must expeditiously make a *new* determination on the request for certification where an employer has filed a timely application and the application was denied because the employer was referred "qualified eligible individuals," but at the time the workers were required, the workers were not actually available and qualified. The employer has the burden of establishing that workers referred were not actually qualified because of employment-related reasons.

The Secretary of Labor, in consultation with the Attorney General and the Secretary of Agriculture, is required to report annually to the Congress on the certification process, including the impact of temporary alien workers on labor conditions in the United States and on compliance with the conditions of the program.

This section authorizes the appropriation of $10,000,000 each fiscal year (beginning with fiscal year 1983) to recruit domestic workers for jobs which temporary alien workers might otherwise perform and to monitor conditions of employment of nonimmigrant workers and of U.S. workers employed by the same employers. It authorizes the Secretary of Labor to take such actions as may be necessary to assure employers compliance with the conditions of employment of such workers.

Section 211(c) makes these changes effective for petitions and applications filed on or after the first day of the sixth month beginning after enactment.

Section 211(d) requires the Attorney General, in consultation with the Secretary of Labor and the Secretary of Agriculture, to approve all regulations implementing the amendments of this section before they are issued. It is the Committee's intent that the

Secretary of Labor will continue to issue all regulations relating to labor certification. Nevertheless, the Committee believes that the Department of Agriculture should have a meaningful role in formulating regulations of the H-2 (a) program, which deal with the particular needs of agriculture. As the final nonjudicial authority on the proper interpretation of immigration laws, the Attorney General should approve, after consultation with both the Department of Labor and the Department of Agriculture, regulations governing the admissibility of agricultural H-2 workers under this section.

Section 212—Students

Section 212(a) amends the provisions of section 212(e) of the INA to require that foreign students, whether academic or vocational, return to their country for at least two years after attending school in the United States, before they may obtain permanent residence status or one of the work-related nonimmigrant status under section 101(a) 15 (H) or (L). As with foreign medical graduates, this requirement cannot be waived by the government of the country of nationality, but may be waived by the Attorney General in order to avoid "exceptional hardship" to the U.S. citizen or permanent resident spouse or child of such alien, or if the alien would be subject to persecution on account of race, religion, or political opinion. The Attorney General, if he deems it to be in the public interest, may waive the two-year residency requirement for 1,500 individuals a year who have been offered a teaching position at a college or university teaching in his degree field in the natural sciences, mathematics, computer sciences or engineering. This exception is intended to permit colleges and universities to continue to meet their teaching resource needs in these "high tech" areas with foreign students.

An additional 4,500 individuals a year with terminal degrees in the natural sciences, mathematics, computer sciences or engineering may recieve a waiver from the Attorney General to accept a research or technical position from a United States employer in his degree field. *Section 212(c)(1)* provides that this requirement only applies to aliens who obtain student status after enactment.

Section 212(b) amends section 245(c) of the INA to prohibit students (other than immediate relatives of United States citizens) and visitors entering the United States under the visa waiver pilot program from adjusting in the United States their status to permanent resident. They must apply for an immigrant visa and receive it abroad.

Section 212(c)(2) provides that this provision applies to students currently in the United States as well as those who may enter in the future.

Section 213—Visa waiver for certain visitors

Section 213(a) amends section 212 of the INA to authorize the Attorney General and the Secretary of State to jointly establish a pilot program for three years for the admission of foreign tourists and business visitors without a visa. This program would only permit the entry of an alien for 90 days, and would only apply to an alien who is a national of one of the 8 countries selected by the

Secretary of State and the Attorney General from among those who extend or agree to extend reciprocal privileges to U.S. citizens. The program requires completion of a new immigration form and waiver of certain review and appeal rights before entry, and requires the alien to have a roundtrip, nonrefundable, nontransferable, open-dated transportation ticket issued by a qualified carrier. It does not apply to any alien who has been determined to represent a threat to the welfare, safety, or security of the United States, and would not apply to any alien who previously failed to comply with the conditions of any previous admission as a nonimmigrant. All such aliens would still be subject to the exclusion provisions of INA section 212(a).

The program may not be put into operation until 30 days after the Attorney General has certified to Congress that an automated control system, developed and established in cooperation with the Secretary of State, to screen and monitor arrival and departure of foreign visitors into the United States is operational and that a form has been developed which summarizes the grounds of exclusion, describes the terms and conditions of entry under the visa waiver program and the consequences of failure to comply, and includes questions concerning any previous entries or any denial of a visa application.

A country cannot qualify initially unless in the prior fiscal year the number of visitor visa refusals of visitors constituted less than 2% of the total number of visitor visas issued or denied to nationals of that country. In subsequent periods, new countries must meet this test and countries previously designated must not have had in the prior fiscal year a total of visitors exceeding 2% of the total number of nationals of that country applying for admission to the United States.

The nonrefundable, roundtrip ticket must be issued by a carrier which has agreed to indemnify the United States against costs of transporting from the United States visitors who are refused admission or who unlawfully overstay, to notify the Attorney General when visitors have failed to depart within the required 90-day period, and to submit on a daily basis any immigration forms collected. The Attorney General can terminate these agreements with 5 days notice for a carrier's failure to meet the terms of the agreement.

The pilot program begins on the date 30 days after the Attorney General has certified to Congress that the monitoring system and forms are in place to begin the program and terminates with the end of the third fiscal year beginning after that date.

Section 213(b) amends section 214(a) of the INA to prohibit extension of period of stay for visa waiver visitors.

Section 213(c) notes that under a previous provision (Section 212 (b)) visa waiver visitors are prohibited from adjusting to permanent resident status.

Section 213(d) prohibits visa waiver visitors from adjusting to another nonimmigrant status.

TITLE III—LEGALIZATION

Section 301—Legalization

Section 301(a) adds a new section 245A to the INA. providing for adjustment of status of certain aliens who entered the U.S. before January 1, 1982.

Under subsection (a) of the new section 245(A), the Attorney General is given discretionary authority to adjust the status of certain aliens to that of aliens lawfully admitted for permanent residence if they establish that they entered the United States before January 1, 1977, have resided continuously in the U.S. in an unlawful status since that date, and are otherwise admissible as an immigrant. If the alien entered legally as a nonimmigrant, any authorized period of stay must have expired before January 1, 1977. If the alien had been an exchange visitor, the two-year foreign residency requirement must have been satisfied or waived.

Under subsection (b) of the new section, the Attorney General is given discretionary authority to adjust the status of certain other aliens to a new legal status, that of aliens lawfully admitted for *temporary* residence, if they establish that they either (i) entered the United States before January 1, 1980 and have resided continuously in the U.S. in an unlawful status since that date, or (ii) were nationals of Cuba who presented themselves for inspection after April 20, 1980, and before January 1, 1981, or natives of Haiti who were in the United States as of December 31, 1980, and on that date either were asylee applicants, were under an unexecuted deportation order, or were granted extended voluntary departure.

The Attorney General may receive applications for adjustment of status under this subsection beginning three months after the enactment of the legislation. Applications must be filed within one year thereafter.

If the alien entered legally as a nonimmigrant, any authorized period of stay must have expired before January 1, 1982. If the alien had been an exchange visitor, the two-year foreign residency requirement must have been satisfied or waived. During their period of temporary lawful residence, these aliens may make brief and casual trips abroad, for example, to visit relatives and friends and they are granted authority to work in the United States.

No alien who has been convicted of any felony or three or more misdemeanors in the U.S. or has assisted in persecuting any persons on account of race, religion, nationality, membership in a particular social group, or political opinion, could qualify for either kind of legalization.

The Committee intends that for purposes only of the new INA section 245A (a)(2) and (b)(1) the phrase "entered the United States" be interpreted in its nontechnical sense, in other words as equivalent to the phrase "physically came into the United States."

Extended voluntary departure is not a legal nonimmigrant status, and thus all aliens given voluntary departure or extended voluntary departure status prior to January 1, 1980, would be eligible for legalization, assuming they had not been reinstated later into a legal status nor were otherwise ineligible.

Except in the case of Cuban/Haitian entrants, aliens in temporary resident status will not be eligible for programs of Federal financial assistance granted on the basis of financial need, other than assistance required because of old age, blindness, or disability, or health care required in the interest of public health or because of serious illness or injury. In providing for such exceptional cases requiring assistance for aliens granted temporary resident status, the Committee does not intend automatic eligibility for such programs as Medicaid and Supplemental Security Income (SSI). Rather, it is the Committee's intent that the Attorney General, in consultation with the Secretary of Health and Human Services, develop regulations to define "assistance required because of old age, blindness, or disability" and "health care required in the interest of public health or because of serious illness or injury" and to designate the most cost-effective approach for extending Federal fiscal responsibility in limited circumstances and for a limited period of time. State or local governments are authorized to provide that aliens in temporary resident status are ineligible for state or local assistance programs, with the same exceptions. Adjustments of status under this section will not affect the provision of assistance under the Cuban/Haitian assistance program.

Section 301(a) provides that the Attorney General shall prescribe an application fee of at least $100 to meet the costs of adjustment of status by aliens under the legalization program. The figure is based on the cost of obtaining a "green card," and the experience with the legalization program in the Virgin Islands. In addition this section provides that these fees shall be collected and placed in a separate account and shall be available without fiscal year limitations to cover administrative expenses in connection with the review of applications filed under this section. It is intended by this section to have the legalization program be in large measure self-financing.

The statute sets forth the framework for a definition of continuous residence. It requires all persons to be legalized to be physically present in the United States at the time of legalization. In addition, in the case of aliens who are being legalized as one continuously resident since January 1, 1977, the aggregate period of time outside the United States may not be in excess of 180 days. In the case of persons who are receiving legal status based on continuous residence since January 1, 1980 (temporary residents), the period outside the United States may not exceed 90 days. In the case of nationals of Cuba and Haiti whose continuous residence is based on a date of January 1, 1981, the time spent outside the United States may not exceed 60 days. These figures contemplate an annual absence of 30 days during the period of continuous residency.

The section also sets forth the general principle that employment data, if available, shall be utilized as the basic documentation for the legalization program, and that documentation must be corroborated. However, there are many people who will be legalized who may not have such data: alien spouses and children, students, refugee and asylum applicants. These persons may use other documentation with an independent corroboration. The Committee expects the Attorney General to take into account that documentation of employment may not be available in some cases.

This section limits the judicial review of a legalization applicant. A legalization program of this magnitude is unique in the United

States' and the world's experience. It provides a benefit to large numbers of persons throughout the United states who are unknown to government authorities. It will require a Herculean managerial effort to review these applications and assure that persons who should be legalized received that benefit.

The Committee is concerned that an effort will be made for many persons who are ineligible for the legalization program to utilize judicial review to extend the proceedings with the effect of not only preventing their own deportation but preventing the expenditious carrying out of the program for others as well. It is critical that final determinations are made promptly. The bill restricts judicial review of these administrative determinations. No review of the administrative determination is permitted in any court in the United States, or in any state, and may not come up in a collateral way in an exclusion or deportation proceeding. It is intended that the administrative determination once made be final. In setting forth this restriction, as elsewhere in the bill, it is the intent of the Committee that Congress exercise the full extent of its jurisdiction over immigration under the Constitution.

To assure fairness, the Committee also intends that within the administration of this program there will be an appellate review at the administrative level so that this significant benefit will not be decided by one official alone.

In order to meet the managerial burden on the Federal government, the bill authorizes the hiring of temporary employees who were formally employees of the United States Government to assist in this effort. To facilitate this, the bill permits such temporary employees to continue to receive their pension during that period of temporary employment. This special benefit is limited to fifteen (15) months, a time based upon the duration of the legalization program.

Section 302(a)

The Committee notes the concern expressed by state and local governments regarding the potential fiscal impact arising from participation in public assistance programs by the legalized population. This concern is related to the experience these governments have had with refugee populations, whose dependence on special Federal entitlement programs has reached as high as 70 percent in the last two years, thereby thwarting the primary intent of the Federal domestic assistance program, which is to encourage economic self-sufficiency among refugees.

Section 301(a) authorizes the appropriation of such sums as may be necessary for fiscal year 1984 and for each of the five succeeding fiscal years, to provide block grant assistance to States.

Section 302(b) authorizes the Secretary of Health and Human Services to allot to each state from the sums appropriated in accordance with the authorization an amount to be determined in accordance with the formula established by the Secretary which takes into account (1) the number of eligible legal aliens residing in the state in a particular fiscal year, (2) the ratio of the number of eligible legalized aliens in the state to the total number of residents in the state and to the total number of such aliens in all the states in that fiscal year, (3) the amount of expenditures the state is likely to incur in the fiscal year providing assistance for eligible legalized aliens under programs of public assistance, and (4) such other factors as the Secretary deems appropriate in order to provide for an equitable distribution of sums and to permit the states to meet the costs of public assistance programs which result from the legalization program. A report must be filed by the state with the Secretary of Health and Human Services in order to receive its allotment. This report shall describe the intended use of payments the state will receive that fiscal year and give an assurance that the funds to be allotted to the state will only be used to carry out the purposes described in that report. In addition each state shall prepare and submit to the Secretary annual reports on activities funded under this section and every two years audit the expentures for amounts received under this section. The state is required to make refunds to the Secretary of all funds not expended in accordance with the statute. The state will submit a copy of the audited expenditures to the Secretary of Health and Human Services.

The Secretary shall annually report to the Congress on all reports that he receives from the state.

In order to assure that the legalized population, in both temporary resident status and permanent resident status, remains economically self-sufficient and does not present a disproportionate fiscal burden, the Committee intends that each applicant for legalization, including all dependents, be carefully screened to meet the requirement of INA section 212(a)(15) that he not be likely to become a "public charge." Such screening should occur in connection with applications for temporary resident status, applications to adjust from temporary to permanent resident status, and direct applications for permanent resident status. The Committee further intends that waivers of the provisions of INA section 212(a)(15) will be granted only in unusual circumstances involving extreme hardship. Furthermore, the Committee wishes to state that although it is aware that the State Department and the Immigration and Naturalization Service have interpreted "public charge" to exclude persons receiving assistance through such programs as "food stamps" and "rent subsidies," it does not concur with this interpretation of INA section 212(a)(15).

The Attorney General is given discretionary authority to adjust to permanent resident status those who have temporary resident status, if the alien applies within the 6-month period beginning 2 years after they have temporary resident status, has been continuously resident in the U.S. in temporary resident status during the 2-year period, is otherwise admissible as an immigrant, has not been convicted of a felony or three or more misdemeanors, and has satisfied an English competence requirement, (to the extent applicable if such alien were naturalizing) or is satisfactorily pursuing a recognized course of study leading to a minimum English language competence.

The Attorney General may terminate temporary resident status if the alien commits acts making the alien inadmissible as an immigrant, or is convicted of any felony or at least three misdemeanors, or after 31 months if the alien has not filed for adjustment to permanent resident status.

Under subsection (c) of the new section, the Attorney General is authorized to utilize qualified organizations including local and state governments, both to disseminate information, and as outreach organizations to assist in the legalization program. Subsection (c) also waives the labor certification, lack of proper documentation, illiteracy, and foreign medical graduate grounds for exclusion and permits the Attorney General to waive additional grounds (except those related to criminal and most drug offenses, and security-related grounds) for humanitarian purposes, in order to assure family unity, or when otherwise in the national interest.

During the first 6 months after enactment, the Attorney General is required to widely disseminate in cooperation with qualified voluntary agencies and the Department of Labor, information on the legalization program authorized under this section.

Section 301(b) provides a conforming change to the table of contents of the INA.

TITLE IV—REPORTS TO CONGRESS

Section 401—Reports to Congress

Section 401 requires the President to submit a number of reports to the Judiciary Committees of the Senate and House, S. 2222 makes major changes in immigration law. All the impacts of such changes cannot be known in advance with certainty. Consequently, the Committee believes that the President should be directed to prepare and submit such reports on the impact of several important provisions of the bill. This is not intended to imply that Executive Branch agencies should not study and report on other provisions. The required reports include:

(a) Reports on the implementation of the bill's prohibition of the knowing employment, recruitment, or referral of illegal aliens, including an analysis of the transitional verification system and progress toward a more secure system, and an analysis of the impact of the program on the labor market, the number of illegal aliens, discrimination against members of minority groups, and the paperwork burden on U.S. employers.

(b) A report on legal immigration, including the number of aliens admitted in the 3½ years after enactment as immediate relatives and other categories of permanent residents, refugees, asylees, parolees, and the impact of sluch aliens on the labor market. This report is due no later than 4 years after enactment.

(c) A report on the implementation of amendments to the H-2 program, including the impact on U.S. agricultural employers and workers, the development of regulations, and recommendations for modification of the program. This report is due no later than 2 years after enactment. The Committee is interested specifically in whether the amended H-2 program has effectively met legitimiate temporary labor shortages which may arise in agriculture without deleterious effect on the wages and working conditions of American agricultural workers.

There were various important issues raised during the hearings and consultations on the H-2 program which the Committee believes should be addressed in the formulation of regulations. These include the issue of whether there is sufficient flexibility in provisions for housing, an issue which becomes especially important as the H-2 program is extended to meet the specific needs of agriculture in the Western part of the country. Harvest periods there sometimes last only a few weeks. It is also necessary to evaluate current regulations exempting employers from paying social security and unemployment insurance for their H-2 workers and whether such an exemption constitutes a "payroll tax wedge," which favors the hiring of foreign over U.S. workers.

This report should also include recommendations to further address the Committee's intent that this program help meet temporary labor shortages, as part of an overall immigration reform package. The Committee views any expansion of the H-2 program as transitional in nature and asks for recommendations that will preclude the long-term dependence of any U.S. industry on a constant supply of foreign labor.

(d) A report on the pilot visa waiver program, including the impact on control of alien visitors to the U.S., consular operations in the countries selected for the program, and on the U.S. tourist industry, and including recommendations about extension and expansion of the program. This report is due no later than 2 years after the beginning of the program.

(e) A report on the legalized population, including geographic origins and manner of entry into the U.S., demographic characteristics, patterns of employment, participation in social service programs, and a generalized profile and description of the population. This report is due no later than 2 years after enactment.

Section 403—Report of the Comptroller General

In addition to the reports of the Executive Branch, the Comptroller each year, for five years, is required to submit a special report on the impact of the employer sanctions program to the Committee on the Judiciary and the Committee on Education and Labor in the House of Representatives and the Committee on the Judiciary and the Committee on Labor and Human Resources in the Senate.

These reports, each examining different aspects of the bill, some overlapping but from different perspectives, will provide to the Congress a continuing, current assessment of the impact of the bill on the economy and on U.S. citizens and legal aliens. It will permit the Congress, if necessary, to address problems of employment discrimination and regulatory burden resulting from the legislation.

Section 404(a)—Authorization of appropriation

The bill authorizes $200 million to administer all of its provisions including the legalization program, asylum adjudication changes, and employee sanctions. This does not include the block grant sums to the States authorized under Section 302.

Section 404(b)

The bill also authorizes additional sums as may be necessary for the enforcement activities of the Wage and Hour Division and the Office of Federal Contract Compliance program within the Department of Labor. Sums are also provided for the Equal Employment Opportunity Commission for its enforcement activities. This section was included as a response the concerns of some of employment discrimination under the employee sanctions provisions of the bill.

Section 405 establishes the sense of the Congress that English is the official language of the United States and that no other language than English is recognized as an official language of the United States.

VI. COST ESTIMATE

In accordance with Section 252(a) of the Legislative reorganization Act (2 U.S.C. 190(j)), the Committee estimates that there will be added costs due to this act and adopts the cost estimate prepared by the Congressional Budget Office (CBO), set forth below.

On April 21, 1983 the following opinion was received from CBO:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., April 21, 1983.

Hon. Strom Thurmond,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for S. 529, the Immigration Reform and Control Act of 1983, as ordered reported by the Senate Committee on the Judiciary, April 19, 1983.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

Alice M. Rivlin, *Director.*

Congressional Budget Office Cost Estimate

1. Bill number: S. 529.
2. Bill title: Immigration Reform and Control Act of 1983.
3. Bill status: As ordered reported by the Senate Committee on the Judiciary, April 19, 1983.
4. Bill purpose: S. 529 makes some major revisions and reforms to the Immigration and Nationality Act. Title I focuses on the control of illegal immigration. Part A establishes new guidelines for the employment of immigrants, and directs the President to implement a secure system to determined employment eligibility in the United States within three years of the date of enactment. Part B expresses the intent of Congress to increase the level of border patrol and other enforcement activities, makes it unlawful to transport any unauthorized alien into the United States, and allows the Attorney General to impose fees on aliens which reflect the cost of their use of the border facilities. Part C establishes a United States Immigration Board and an immigration law judge system to hear and decide cases involving alien exclusion, deportation, suspension of deportation, asylum, and civil penalties. Part C also amends the existing law governing alien asylum in the United States. Part D changes the law concerning adjustment of nonimmigrants to immigrant status, while part E deals with deportation proceedings.

Title II reforms existing law regarding legal immigration. Part A establishes new numerical limitations and performance guidelines, revises the Department of Labor's labor certification system, and amends the immigration law regarding G-4 special immigrants. Part B amends those provisions of the Immigration Act relating to nonimmigrant workers (H-2 workers), amends the procedures for obtaining approval of H-2 petitions, and allows the Secretary of Labor to charge fees to recover the cost of processing applications for certification. The bill provides a permanent authorization of $10 million for recruiting domestic workers for temporary labor, and for monitoring the terms and conditions under which such nonimmigrants and domestic workers are employed. Part B also establishes a pilot program of visa waivers for certain visitors.

Title III of the bill relates to the legalization of unauthorized aliens already in the country. This section empowers the Attorney General to adjust, at his discretion, the status of unauthorized aliens to that of lawfully admitted aliens eligible for permanent residence if they apply, meet certain conditions, can establish that they illegally entered the United States prior to Jaunary 1, 1977, and have been residing here continuously since then. Those unauthorized aliens who have illegally entered the United States prior to January 1, 1980, including certain Cuban and Haitian entrants, may have their status adjusted to being lawfully admitted for temporary residence. Title III also empowers the Attorney General to adjust the status of aliens lawfully admitted for temporary residence to permament residence under certain conditions. In addition, it limits federal program benefits for which the unauthorized aliens granted permanent and temporary residence are eligible and authorizes block grants to states for fiscal years 1984 through 1989 to assist in meeting the costs of providing public assistance to legalized aliens. Further, the bill requires the Attorney General to prescribe a fee of at least $100 for each application for resident status filed by an alien, to be used to cover administrative expenses associated with the applications.

Title IV requires the President and the United States Comptroller to submit a number of reports to Congressional committees within set periods of time.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1983	1984	1985	1986	1987	1988
Direct spending provisions:						
Required budget authority:						
Function 550	—	—	—	−4	−27	−62
Function 600	—	−3	−10	−18	−5	−20
Estimated outlays:						
Function 550	—	—	—	−15	−55	−90
Function 600	—	−50	−115	−145	−180	−185
Amounts subject to appropriation action:						
Estimated authorization level:						
Function 600	—	−30	−185	−440	−495	−410
Function 750	−35	−210	−155	−395	−875	−555
Estimated outlays:						
Function 600	—	−30	−185	−440	−495	−410
Function 750	−32	−190	−160	−370	−827	−590

	1983	1984	1985	1986	1987	1988
Total spending:						
Estimated authorization level/required budget authority	35	−237	−330	−821	−1,402	−1,047
Estimated outlays	−32	−270	−460	−970	−1,557	−1,275
Estimated revenues	−15	−190	−45	−45	−50	−50
Net budget impact: Estimated net increase to the deficit	−17	−80	−415	−925	−1,507	−1,225

Basis of estimate: The bill authorizes fiscal year 1984 appropriations of $10 million for recruiting domestic temporary workers and $200 million for all other provisions of the bill. For the purpose of this estimate, CBO asumes that the full amounts authorized or estimated to be required will be appropriated. This bill would also result in additional future federal liabilities through an extension of an existing entitlement and would require subsequent appropriation action to provide the necessary budget authority.

The table below shows the estimated budget authority and outlays required to perform the tasks required by the bill that fall under function 750 (Administration of Justice).

ESTIMATED BUDGET IMPACT—FUNCTION 750

[By fiscal year, in millions of dollars]

	1983	1984	1985	1986	1987	1988
Secure identification system:						
Estimated authorization level				250	700	400
Estimated outlays				225	655	430
Other costs:						
Estimated authorization level	35	210	155	145	175	155
Estimated outlays	32	190	160	145	172	160
Total estimated authorization level	35	210	155	395	875	555
Total estimated outlays	32	190	160	370	827	590

The cost of the secure identification system is dependent on the nature of the system selected. Two of the major proposals have been offered by the Department of Labor and the Social Security Administration. Both systems would provide employers with a secure, immediate means of verifying the eligibility of all job applicants and would provide the government with a means of enforcing employer sanctions. The system envisioned by the Department of Labor's Employment and Training Administration would be based in the 2,600 U.S. Employment Service field offices. The Social Security Administration's system would involve reissuing new, tamper-proof social security cards to all card holders. Assuming that the Administration will take three years to implement a secure identification system, outlays for such a system would be approximately $0.2 billion in 1986, $0.7 billion in 1987, and $0.4 billion in 1988.

Based on information provided by the Immigration and Naturalization Service (INS), CBO estimates that enforcing the employer sanctions provision would require an additional 550 workyears plus first-year startup costs. This would allow the INS to investigate 10,000 employer worksites annually, to detain 16,000 individuals, and to handle any additional workload generated by worksite investigations and apprehensions. The total cost of this provision is estimated to be approximately $40 million per year, beginning in 1984. In addition, the Department of Labor will assist in enforcing employer sanctions, which will require an additional $4 million in fiscal year 1984, increasing to approximately $5 million in fiscal year 1988.

Most of the remaining costs that fall under function 750 result from increased INS enforcement of border control laws, the expenditures associated with processing applications for permanent and temporary residency, and the requirement that the federal government assist employers in locating domestic workers for jobs that would otherwise be performed by temporary nonimmigrant laborers (H-2 workers). The cost to the INS of increasing border patrols is estimated to be about $85 million in 1984, and $70–$80 million per year thereafter. INA expenditures associated with the legalization provisions of the act would result in additional outlays of about $80 million in 1984, falling to $16 million by 1988. This decline results from the fact that residency applications will filed only in the first and fourth years following enactment. The bill authorizes $10 million a year for locating domestic workers to perform tasks that would otherwise be performed by temporary foreign workers.

The bill requires the Attorney General, in consultation with the Secretary of State, to impose fees on aliens entering the United States at border facilities to recover the cost of their use of the facilities. Based on information provided by the INS , CBO estimates that an average of 200 million aliens will enter the United States by land, sea, or air in each of the next five years, at a total cost to the INS of $40 million a year at 1983 prices. The INS would be able to recover this cost by imposing a fee of $0.20 per entry in 1983, with small upward adjustments in subsequent years to reflect inflation. This fee would be classified as a revenue to the Federal Government.

The bill also requires the Attorney General to collect a fee of at least $100 for each application submitted by an alien for permanent or temporary residency under the legalization provisions of Title III. Assuming that 1.5 million aliens chose to apply for legal residency and that the fee is $100, CBO estimates that the government would receive revenues totalling $150 million 1n 1984. Estimated revenues are summarized in the following table.

ESTIMATED REVENUES

[By fiscal year, in millions of dollars]

	1983	1984	1985	1986	1987	1988
Entry fee	15	40	45	45	50	50
Residency application fee		150				
Total revenues	15	190	45	45	50	50

Title III ("Legalization") would have a major impact on federal outlays in functions 550 and 600. First, the provisions that legalize unauthorized aliens would entitle the aliens to receive benefits after three to six years from a number of federal assistance programs. Such programs as Aid to Families with Dependent Children

(AFDC), Supplemental Security Income (SSI), Medicaid, and Food Stamps now require recipients to be citizens or permanent residents. In addition, in other programs, such as Disability Insurance (DI), many legalized aliens who would not have collected benefits would now be expected to do so. The provisions of the bill preclude aliens granted permanent resident status from receiving any program of federal financial assistance based on "financial need," Medicaid, and Food Stamps for a period of three years; aliens granted temporary resident status would be precluded from the receipt of these programs for a period of 6 years. Hence, increased federal outlays for these programs would not occur until fiscal year 1987.

Second, Title III provides an authorization for the appropriation of such sums as may be necessary in fiscal years 1984 through 1989 to provide block grants to states for costs of public assistance to eligible legalized aliens. Aliens granted permanent resident status are eligible for three years; aliens granted temporary resident status are eligible for six years if they are later granted permanent resident status or until they are terminated (at the end of 3½ years).

Added program outlays as a result of legalizing unauthorized aliens under Title III of the bill are shown in the table below. These added outlays are estimated to be $80 million, $300 million, $600 million, $730 million, and $685 million in fiscal years 1984 through 1988, respectively.

ESTIMATED BUDGET IMPACT—FUNCTIONS 550 AND 600

[By fiscal year, in millions of dollars]

	1983	1984	1985	1986	1987	1988
AFDC (function 600):						
Required budget authority					20	35
Estimated outlays					20	35
Food Stamps (function 600):						
Estimated authorization level					15	30
Estimated outlays					15	30
SSI (function 600):						
Required budget authority					10	15
Estimated outlays					10	15
Unemployment compensation (function 600):						
Required budget authority						
Estimated outlays			20	50	55	45
Disability insurance (function 600):						
Required budget authority		−3	−10	−18	−25	−30
Estimated outlays		50	95	95	95	90
Medicaid (function 550):						
Required budget authority					25	60
Estimated outlays					25	60
Medicare (function 550):						
Required budget authority				4	2	2
Estimated outlays				15	30	30
Block grants to States (function 600):						
Estimated authorization level		30	185	440	480	380
Estimated outlays		30	185	440	480	380
Subtotal: Direct spending provisions:						
Required budget authority		−3	−10	−14	−32	−82
Estimated outlays		50	115	160	235	275
Subtotal: Amounts subject to appropriation action:						
Estimated authorization level		30	185	440	495	410
Estimated outlays		30	185	440	495	410

ESTIMATED BUDGET IMPACT—FUNCTIONS 550 AND 600—Continued

[By fiscal year, in millions of dollars]

	1983	1984	1985	1986	1987	1988
Total functions 550 and 600:						
Estimated authorization level/required budget authority		27	175	426	527	492
Estimated outlays		80	300	600	730	685

This estimate is very uncertain. First, it includes estimated authorization levels for the block grants to states that are large enough to cover the full estimated costs to states for assistance to the legalized aliens. Less than the full costs, however, may be appropriated. Second, very little is known about either the numbers of unauthorized aliens in the United States or their characteristics.

It has been generally accepted that there were 3 to 6 million unauthorized aliens in the United States in the late 1970's. Some have suggested that there has been a net inflow of such aliens into the United States in the last few years, raising the number of aliens above 3 to 6 million. However, recent studies by the Census Bureau of the numbers of illegal aliens counted in the 1980 Census indicate that the 3 to 6 million range may be too high. Hence, the CBO estimate uses the midpoint of the original 3 to 6 million range: 4.5 million illegal aliens. Of these aliens, it is assumed based on Immigration and Naturalization Service studies that 11 percent have resided continuously in the United States since January 1, 1977, qualifying for permanent residence, and that 23 percent have resided continuously in the United States since January 1, 1980, qualifying for temporary residence. Further, the CBO estimate assumes that 60 percent of the potentially eligible aliens would apply for legalization and be granted resident status. The resulting numbers of illegal aliens who would be granted permanent residence immediately total 300,000 and the numbers granted temporary residence total 620,000.

At the time these aliens are granted resident status, the legislation requires that they be employed. Over time, however, this group of aliens could be expected to resemble the United States population as to recipiency of income support programs. By 1987 and 1988, we have assumed that recipiency rates for AFDC, SSI, Food Stamps, and Medicaid would resemble those of the United States population for similar age, sex, ethnic origin, and income groupings.

The remaining discussion provides details for the estimates in each individual program shown in the preceding table. In AFDC, added outlays do not occur until 1987, as discussed earlier. The cost estimate assumes that 52 percent of the aliens given permanent resident status are married men and women. This percentage is based on demographic data on illegal aliens, which show 79 percent to be adults and the majority to be young and male, and on marital rates in the United States. Of the married men and women, 4.5 percent of those not of Spanish origin and 17 percent of those Spanish origin are estimated to receive AFDC. These rates of AFDC recipiency are those which currently exist in the program.

Each adult recipient, and the recipient's family in some cases, is estimated to receive an average of $1,545 in Federal AFDC benefits in fiscal year 1987.

As with AFDC, added Food Stamp outlays do not occur until 1987. The estimate of increased Food Stamp program costs that would result from enactment of this bill assumes that about 15 percent of aliens lawfully admitted for permanent residence participate in the program during any month. This rate of participation is about 60 percent greater than that of the general population. Aliens admitted for permanent residence are likely to have relatively low incomes and would be expected to participate in the Food Stamp program at a somewhat higher rate than the remainder of the population. The national average benefit level is estimated to be $52 per person per month during fiscal year 1988.

In SSI, added program outlays would also begin in fiscal year 1987. The CBO cost estimate is based on a recipiency rate of 0.90 percent for the aged and 0.94 percent for the blind and disabled. The recipiency rate for the aged is based on Census data which show 1.80 percent of illegal aliens to be aged, an assumed income eligibility of 100 percent, and a participation rate for the eligible of 50 percent. The recipiency rate for the blind and disabled is based on the current recipiency rate for the United States population. Annual benefits per recipient are estimated to be $1,834 for the aged and $2,924 for the disabled in fiscal year 1987.

The estimated cost of unemployment compensation outlays associated with the bill is made by applying assumed unemployment rates of 9.5 percent, 8.7 percent, 8.0 percent, 7.6 percent, and 7.1 percent for fiscal years 1984 through 1988, respectively, to the estimated adult alien population. These rates are sightly lower than those used to estimate the CBO baseline, because it is assumed that the alien population is less prone to both cyclical and frictional unemployment. According to information from the Justice Department, the bill's prohibition of aliens from receipt of federal financial assistance would not apply to unemployment benefits. It is assumed that the newly approved residents would receive a somewhat lower average weekly benefit amount than the general population because they are most likely working in relatively low-paying jobs.

In the DI program, it is asssumed that only one-half of the aliens would become eligible for DI in the 1984 to 1988 period. Several factors contribute to this assumption. First, it is probable that many would not have worked for the required number of calendar quarters needed to receive benefits (20 out of the last 40). Second, others may have improper Social Security numbers while some might be presently collecting benefits. Thus, an estimated 450,000 to 500,000 aliens would qualify for DI benefits by the end of 1985. Assuming a disability incidence rate paralleling the current group of eligibles, approximately 14,000 new disabled worker recipients would begin receiving benefits by the start of fiscal year 1985. Average family benefits per recipient are estimated to be $7,100 in fiscal year 1984.

The estimates for the costs of the Medicaid program assumes that beginning in 1987 residents could qualify for the program using the same standards and regulations as the rest of the United

States' population. Thus, those residents who qualify for AFDC or SSI would also be eligible for Medicaid benefits. In addition, residents who are medically needy could also receive Medicaid benefits. The estimate assumes that the ratio of categorically needy individuals to medically needy individuals is equal to the current United States ratio. The estimate also assumes that the average Medicaid benefit for these recipients would equal the United States average for AFDC and SSI recipients.

The estimate for the block grants to states assumes the appropriation of funds to cover all state costs. As noted earlier, less than the full amounts may be appropriated. The cost estimate assumes that cash and medical benefits currently available at the state and local government level would be provided to the legalized aliens. For cash benefits, it is assumed that 1.3 percent of the aliens would qualify for state and local general assistance programs to persons without children. In addition, those persons eligible for AFDC and SSI, but precluded from receiving benefits by this bill, are assumed to receive general assistance (GA), except for aliens living in states like Florida with limited GA programs. Monthly GA benefits in fiscal year 1984 are estimated to be $148 per person. For medical benefits, it is assumed that the GA population would receive benefits that resemble those currently received by the GA and the medically indigent population in the United States.

In addition to the effects of legalization on federal outlays, there are potential effects on federal revenues. On the one hand, federal revenues would increase if some of the aliens who are not having income taxes withheld from their wages at present were to have taxes withheld as a result of the legislation. On the other hand, federal revenues would decrease if some of the aliens who are having income taxes withheld are entitled to tax refunds they do not claim but which they would claim if the bill were enacted. Given the uncertainties concerning characteristics of illegal aliens, and rough estimates showing the two effects above to be approximately offsetting, CBO shows no effect of the bill on federal revenues.

6. Estimated cost to State and local governments: By legalizing certain unauthorized aliens currently residing in the U.S., this bill could have sizable effects on state and local government budgets. Unauthorized aliens are not eligible for welfare programs that are partially—or fully-funded by states and localities. When legalized, these aliens would be eligible for such programs. To offset these costs, the bill would authorize for fiscal years 1984 to 1989 such sums as are necessary to provide block grants to states for programs of public assistance to eligible legalized aliens. The estimated net impact on state and local expenditures is shown in the following table.

[By fiscal year, in millions of dollars]

	1983	1984	1985	1986	1987	1988
AFDC, SSI, GA, Medicaid					45	90
Cuban and Haitian entrants		−15	−25	−25	−25	−25
Total estimated State and local outlays		−15	−25	−25	20	65

In addition, if the provisions of the bill that provide for employer sanctions and other means of reducing the flow of unauthorized aliens into the U.S. are effective, there would be some associated savings to state and local governments. For example, there would be fewer alien children to educate. The CBO cost estimate does not include such savings, given the uncertainties concerning flows of unauthorized aliens into the U.S. and the potential effectiveness of the bill's sanction provisions.

Basis of estimate

Costs to states and localities for providing public assistance to the legalized aliens are shown only for fiscal years 1987 and 1988. For fiscal years 1984 to 1988, the bill authorizes block grants to states for public assistance costs for six years for aliens originally granted temporary resident status and for three years for aliens originally granted permanent resident status. These grants thus cover all of the legalized aliens through fiscal year 1986 and in fiscal years 1987 and 1988 all but those aliens who had permanent resident status for more than three years.

For purposes of this estimate, it was assumed that funds for the grants for states' public assistance costs during 1984–88 would be appropriated in full. If less than the full amount was appropriated, states and localities would have added budgetary costs during these years. On the other hand, if the full amount was appropriated, states and localities might experience some budgetary savings to the extent that some of the unauthorized aliens are illegally receiving public assistance at present or to the extent that the grants cover free health care presently being provided to the aliens in public hospitals. Such potential savings are now shown in the cost estimate because of lack of information.

In fiscal years 1987 and 1988, states and localities would have added AFDC, SSI, GA, and Medicaid costs as a result of legalizing the unauthorized aliens, as shown in the table above. Beginning in 1987, the aliens in permanent resident status for more than three years would become eligible for federal public assistance programs for which they could qualify. States share in the funding of these programs. In AFDC and Medicaid, the states' matching rates are about 46 percent. In SSI, which is a fully federally-funded program, the states at their option supplement federal benefits. The state and local government cost estimate is based on the federal cost estimate described earlier, applying existing state match rates and supplement levels. In addition, for purposes of the estimate it is assumed that some of the permanent resident aliens would receive state-funded general assistance.

In fiscal years 1984–1988, states would have reduced expenditures to the extent that the block grant covers state public assistance costs for Cuban and Haitian entrants. The states' shares of such costs are presently paid for from state funds. The CBO estimate of the block grant includes $15 million in 1984 and $25 million in each year thereafter to cover public assistance costs of the Cuban and Haitian entrants, which become savings to the state and local governments.

7. Estimate comparison: No cost estimate is available from the Administration for the entire bill but one is available for the legalization provisions. These costs as estimated by the Administration are shown below:

Fiscal year:	*Millions*
1983	
1984	225
1985	405
1986	430
1987	520
1988	665

The Administration's estimated costs are higher than CBO's for a number of reasons. First, the Administration uses an estimate of 6.25 million illegal aliens rather than CBO's assumed 4.5 million. Second, the Administration assumes that 70 percent of the aliens will apply for and be converted to permanent or temporary resident status rather than CBO's assumed 60 percent. As a result, the Administration estimates 1,667,000 legalized aliens while CBO estimates 920,000. Third, the Administration assumes higher participation rates than does CBO in several of the income support programs (primarily Food Stamps and GA).

The Administration's estimate for the legalization provisions does not include costs for unemployment compensation or Medicare, as does CBO's.

8. Previous CBO estimate: None.

9. Estimate prepared by: Janice Peskin (226-2835), Charles Essick (226-2860), Hinda Ripps Chaikind, Stephen Chaikind, Malcolm Curtis, Carmela Pena, Richard Hendrix, Kelly Lukins, John Navratil (226-2820), and Kathleen O'Connell (226-2693).

10. Estimate approved by: Robert A. Sunshine (for James L. Blum, Assistant Director for Budget Analysis).

VII. REGULATORY IMPACT EVALUATION

In compliance with subsection (b) of paragraph 11 of Rule XXVI of the Standing Rules of the Senate, it is hereby stated that the only significant regulatory impacts that will result from the enactment of S. 529 arise from certain requirements of Sec. 101(a) of the bill, namely certain mandatory procedures for the verification of employment eligibility and record-keeping in connection therewith. The impact of these requirements is discussed in the first section of Part D of the General Statement, and in the portion of the Section-by-Section Analysis which describes Sec. 101(a) of the bill. Any further discussion of such impacts would be impracticable and, therefore, is omitted in accordance with clause (2) of such subsection (b), since details of the required forms and procedures will be developed only after enactment, by regulations of the Department of Justice and other Executive agencies.

VIII. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing laws proposed to be made by the bill are shown as follows: Existing law to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman.

Immigration and Nationality Act

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TITLE I—GENERAL

DEFINITIONS

SECTION 101. (a) As used in this Act—
(1) * * *

* * * * * * *

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens—

(A) * * *

* * * * * * *

(H) an alien having a residence in a foreign country which he has no intention of abandoning (i) who is of distinguished merit and ability and who is coming temporarily to the United States to perform services of an exceptional nature requiring such merit and ability, and who, in the case of a graduate of a medical school coming to the United States to perform services as a member of the medical profession, is coming pursuant to an invitation from a public or nonprofit private educational or research institution or agency in the United States to teach or conduct research, or both, at or for such institution or agency; or (ii) who is coming temporarily to the United States [to perform temporary services or labor, if unemployed persons capable of performing such service or labor cannot be found in this country] *(a) to perform agricultural labor or services, as defined by the Secretary of Labor in regulations, of a temporary or seasonal nature, or (b) to perform other temporary services or labor* but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession; or (iii) who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training; and the alien spouse and minor children of any such alien specified in this paragraph if accompanying him or following to join him;

* * * * * * *

(L) an alien who, immediately preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge, and the alien spouse and minor children of any such alien if accompanying him or following to join him; [or]

(M)(i) an alien having a residence in a foreign country which he has no intention of abandoning who seeks to enter the United States temporarily and solely for the purpose of pursuing a full course of study at an established vocational or other recognized nonacademic institution (other than in a language training program) in the United States particularly designated by him and approved by the Attorney General, after consultation with the Secretary of Education, which institution shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant nonacademic student and if any such institution fails to make reports promptly the approval shall be withdrawn, and (ii) the alien spouse and minor children of any such alien if accompanying him or following to join him[.] *; or*

(N)(i) the parent of an alien accorded the status of special immigrant under paragraph (27)(I)(i), but only if and while the alien is a child, or

(ii) a child of such parent or of an alien accorded the status of a special immigrant under paragraph (27)(I) (ii), (iii), or (iv).

* * * * * * *

(27) The term "special immigrant" means—

(A) * * *

* * * * * * *

(G) an immigrant, and his accompanying spouse and children, who was an employee of the Panama Canal Company or Canal Zone government on the effective date of the exchange of instruments of ratification of such Panama Canal Treaty of 1977, who has performed faithful service for five years or more as such an employee, and whose personal safety, or the personal safety of whose spouse or children, as a direct result of such Treaty, is reasonably placed in danger because of the special nature of any of that employment; **[**or**]**

(H) an immigrant, and his accompanying spouse and children, who—

(i) has graduated from a medical school or has qualified to practice medicine in a foreign state,

(ii) was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date,

(iii) entered the United States as a nonimmigrant under subsection (a)(15)(H) or (a)(15)(H) before January 10, 1978, and

(iv) has been continuously present in the United States in the practice or study of medicine since the date of such entry **[**.**]** *; or*

(I)(i) an immigrant who is the unmarried son or daughter of an officer or employee, or of a former officer or employee, of an international organization described in paragraph (15)(G)(i), and (I) while maintaining the status of nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States within seven years of the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least seven years between the ages of five and twenty-one years, and (II) applies for admission under this subparagraph no later than his twenty-fifth birthday or six months after the date this subparagraph is enacted, whichever is later;

(ii) an immigrant who is the surviving spouse of a deceased officer or employee of such an international organization, and (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States within seven years of the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least fifteen years prior to the death of such officer or employee, and (II) applies for admission under this subparagraph no later than six months after the date of such death or six months after the date this subparagraph is enacted, whichever is later;

(iii) an immigrant who is a retired officer or employee of such an international organization, and (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv), has resided and been physically present in the United States within seven years of the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least fifteen years prior to the officer or employee's retirement from any such international or-

ganization, and (II) applies for admission under this subparagraph (i) on or before December 31, 1992 and (ii) no later than six months after the date of such retirement or six months after the date this subparagraph is enacted, whichever is later; or

(iv) an immigrant who is the spouse of a retired officer or employee accorded the status of special immigrant under clause (iii), accompanying or following to join such retired officer or employee as a member of his immediate family.

* * * * * * *

(43) The term "immigration judge" means such a judge appointed under section 107.

(b) As used in titles I and II—

(1) * * *

* * * * * * *

[(4) The term "special inquiry officer" means any immigration officer who the Attorney General deems specially qualified to conduct specified classes of proceedings, in whole or in part, required by this Act to be conducted by or before a special inquiry officer and who is designated and selected by the Attorney General, individually or by regulation, to conduct such proceedings. Such special inquiry officer shall be subject to such supervision and shall perform such duties, not inconsistent with this Act, as the Attorney General shall prescribe.]

[(5)] *(4)* The term "adjacent islands" includes Saint Pierre, Miquelon, Cuba, the Dominican Republic, Haiti, Bermuda, the Bahamas, Barbados, Jamaica, the Windward and Leeward Islands, Trinidad, Martinique, and other British, French, and Netherlands territory or possessions in or bordering on the Caribbean Sea.

JUDICIAL REVIEW OF ORDERS OF DEPORTATION [AND EXCLUSION], *EXCLUSION, AND ASYLUM*

SEC. 106. (a) The procedure prescribed by, and all the provisions of the Act of December 29, 1950, as amended (64 Stat. 1129; 68 Stat. 961; 5 U.S.C. 1031 et seq.), shall apply to, and shall be the sole and exclusive procedure for, the judicial review of all final orders of deportation heretofore or hereafter made against aliens within the United States pursuant to administrative proceedings under section 242(b) of this Act or comparable provisions of any prior Act, except that—

(1) a petition for review may be filed not later than [six months] *forty-five days* from the date of the final deportation order or from the effective date of this section, whichever is the later;

(2) the venue of any petition for review under this section shall be in the judicial circuit in which the administrative proceedings before [a special inquiry officer] *an immigration judge* were conducted in whole or in part, or in the judicial circuit wherein is the residence, as defined in this Act, of the petitioner, but not in more than one circuit;

(3) the action shall be brought against the Immigration and Naturalization Service, as respondent. Service of the petition to review shall be made upon the Attorney General of the

United States and upon the official of the Immigration and Naturalization Service in charge of the Service district in which the office of the clerk of the court is located. The service of the petition for review upon such official of the Service shall stay the deportation of the alien pending determination of the petition by the court, unless the court otherwise directs;

(4) *(A)* except as provided in *subparagraph (B) and in* clause (B) of paragraph (5) of this subsection, the petition shall be determined solely upon the administrative record upon which the deportation order is based and the [Attorney General's findings of fact], *findings of fact in the order* if supported by [reasonable, substantial, and probative] *substantial* evidence on the record considered as a whole, shall be conclusive;

(B) the court shall not review the order to the extent that the order relates to an application for asylum;

(5) whenever any petitioner, who seeks review of an order under this section, claims to be a national of the United States and makes a showing that his claim is not frivolous, the court shall (A) pass upon the issues presented when it appears from the pleadings and affidavits filed by the parties that no genuine issue of material fact is presented; or (B) where a genuine issue of material fact as to the petitioner's nationality is presented, transfer the proceedings to a United States district court for the district where the petitioner has his residence for hearing de novo of the nationality claim and determination as if such proceedings were originally initiated in the district court under the provisions of section 2201 of title 28, United States Code. Any such petitioner shall not be entitled to have such issue determined under section 360(a) of this Act or otherwise;

(6) if the validity of a deportation order has not been judicially determined, its validity may be challenged in a criminal proceeding against the alien for violation of subsection (d) or (e) of section 242 of this Act only by separate motion for judicial review before trial. Such motion shall be determined by the court without a jury and before the trial of the general issue. Whenever a claim to United States nationality is made in such motion, and in the opinion of the court, a genuine issue of material fact as the alien's nationality is presented, the court shall accord him a hearing de novo on the nationality claim and determine that issue as if proceedings had been initiated under the provisions of section 2201 of title 28, United States Code. Any such alien shall not be entitled to have such issue determined under section 360(a) of this Act or otherwise. If no such hearing de novo as to nationality is conducted, the determination shall be made solely upon the administrative record upon which the deportation order is based and the [Attorney General's findings of fact], *finds of fact in the order* if supported by reasonable, substantial and probative evidence on the record considered as a whole, shall be conclusive. If the deportation order is held invalid, the court shall dismiss the indictment and the United States shall have the right to appeal to the court of appeals within thirty days. The procedure on such appeals shall be as provided in the Federal rules of criminal

procedure. No petition for review under this section may be filed by any alien during the pendency of a criminal proceeding against such alien for violation of subsection (d) or (e) of section 242 of this Act;

(7) nothing in this section shall be construed to require the Attorney General to defer deportation of an alien after the issuance of a deportation order because of the right of judicial review of the order granted by this section, or to relieve any alien from compliance with subsections (d) and (e) of section 242 of this Act. Nothing contained in this section shall be construed to preclude the Attorney General from detaining or continuing to detain an alien or from taking him into custody pursuant to subsection (c) of section 242 of this Act at any time after the issuance of a deportation order; *and*

(8) it shall not be necessary to print the record or any part thereof, or the briefs, and the court shall review the proceedings on a typewritten record and on typewritten briefs[; and].

[(9) any alien held in custody pursuant to an order of deportation may obtain judicial review thereof by habeas corpus proceedings.]

[(b) Notwithstanding the provisions of any other law, any alien against whom a final order of exclusion has been made heretofore or hereafter under the provisions of section 236 of this Act or comparable provisions of any prior Act may obtain judicial review of such order by habeas corpus proceedings and not otherwise.]

(b)(1)(A) Notwithstanding any other provision of law (except as provided under subparagraph (B)), there shall be no judicial review of a final order of exclusion or a final order respecting an application for asylum.

(B) Where the Attorney General has reviewed and either reversed or modified a determination of the United States Immigration Board under section 107(b)(5)(B), judicial review of such determination shall be available in the same manner, and to the same extent, as a final order of deportation may be reviewed under subsection (a).

(2) Nothing in this section shall be construed as limiting the right of habeas corpus under the Constitution of the United States.

(3) Notwithstanding any other provision of law, no court of the United States shall have jurisdiction to review determinations of immigration judges or of the United States Immigration Board respecting the reopening or reconsideration of exclusion or deportation proceedings or asylum determinations outside of such proceedings, the reopening of an application for asylum because of changed circumstances, the Attorney General's denial of a stay of execution of an exclusion or deportation order, or the exclusion of an alien from the United States under section 235(b)(1).

(c) An order of [deportation or of exclusion] *an immigration judge* shall not be reviewed by any court if the alien has not exhausted the administrative remedies available to him as of right under the immigration laws and regulations or if he has departed from the United States after the issuance of the order. Every petition for review or for habeas corpus shall state whether the validity of the order has been upheld in any prior judicial proceeding, and, if so, the nature and date thereof, and the court in which such proceeding took place. No petition for review or for habeas corpus shall be entertained if the validity of the order has been previously determined in any civil or criminal proceeding, unless the petition presents grounds which the court finds could not have been presented in such prior proceeding, or the court finds that the remedy provided by such prior proceeding was inadequate or ineffective to test the validity of the order.

UNITED STATES IMMIGRATION BOARD; USE OF IMMIGRATION JUDGES

SEC. 107. (a)(1) There is established in the Department of Justice a United States Immigration Board (hereafter in this section referred to as the "Board") composed of a Chairman and eight other members appointed by the Attorney General.

(2) The term of office of the Chairman and all other members of the Board shall be six years, except that—

(A) of the members first appointed under this subsection, three shall be appointed for a term of two years, three shall be appointed for a term of four years, and three shall be appointed for a term of six years,

(B) a member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term, and

(C) a member may serve after the expiration of his term until his successor has taken office.

(3) The Attorney General may remove a member of the Board only for neglect of duty or malfeasance in office.

(4) Members of the Board (other than the Chairman) are entitled to receive compensation at the rate now or hereafter provided for grade GS-17 of the General Schedule, under section 5332 of title 5, United States Code. The Chairman is entitled to receive compensation at the rate now or hereafter provided for grade GS-18 of the General Schedule, under section 5332 of title 5, United States Code.

(5) The Chairman shall be responsible on behalf of the Board for the administrative operations of the Board and shall promulgate rules of practice and procedure for the Board and immigration judges.

(b)(1) The Board shall hear and determine appeals from—

(A) final decisions of immigration judges under this Act, other than a determination granting voluntary departure under section 244(e) within a period of at least thirty days if the sole ground of appeal is that a greater period of departure time should have been fixed;

(B) decisions on applications for the exercise of the discretionary authority contained in section 212(c) or section 212(d)(3)(B);

(C) decisions involving the imposition of administrative fines and penalties, including mitigation thereof;

(D)(i) decisions on petitions filed in accordance with section 204, other than petitions to accord preference status under paragraph (1) or (2) of section 203(b) or petitions on behalf of a child described in section 101(b)(1)(F), and (ii) decisions on requests for revalidation and decisions revoking approval of such petitions under section 205;

(E) determinations relating to bond, parole, or detention of an alien under sections 242(a) and 242(c); and

(F) such other decisions or determinations arising under this Act as the Attorney General may by regulation prescribe.

(2) Three members of the Board constitute a quorum of the Board, except that the Chairman (or any member of the Board designated by the Chairman) is empowered to decide nondispositive motions.

(3) The Board shall act in panels of three or more members or en banc (as designated by the Chairman in accordance with the rules of the Board). A final decision of such a panel shall be considered to be a final decision of the Board.

(4) The Board shall review the decision of an immigration judge based solely upon the administrative record upon which the decision is based, and the findings of fact in the judge's order, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

(5)(A) A final decision of the Board shall be binding on all immigration judges, immigration officers, and consular officers under this Act unless and until otherwise modified or reversed by the Attorney General under subparagraph (B) or by a court of the United States.

(B) If the Attorney General determines that it is necessary for the national interest of the United States, the Attorney General may, within thirty days after the date of a final decision of the Board on a case, provide that the case be certified to him for his review, and the Attorney General shall render a decision on the case within thirty days. The determination of the Attorney General on such case shall be considered for other purposes of this Act to be the final decision of the Board on that case. If the Attorney General shall not have rendered a decision within thirty days, the final decision of the Board shall be considered final and not subject to further review by the Attorney General.

(c)(1) The Attorney General shall, in accordance with procedures and regulations governing appointment and, except as provided in this paragraph, compensation in the competitive service—

(A) appoint immigration judges;

(B) set the rate of compensation for such judges at a rate not to exceed the rate now or hereafter prescribed for grade GS–16 of the General Schedule, under section 5332 of title 5, United States Code; and

(C) designate one such judge to serve as chief immigration judge, who shall be entitled to compensation at the rate now or hereafter prescribed for grade GS–17 of such General Schedule.

(2) In accordance with the rules established by the Board, the chief immigration judge—

(A) shall have responsibility for the administrative affecting immigration judges, and

(B) may designate any immigration judge in active service to hear and decide any cases described in paragraph (3).

(3) Immigration judges shall hear and decide—

(A) exclusion cases under sections 236 and 360(c),

(B) deportation and suspension of deportation cases under sections 242, 243, and 244,

(C) rescission of adjustment of status cases under section 246,

(D) with respect to judges designated to hear such cases, applications for asylum under section 208, and

(E) such other cases as the Attorney General may provide by regulation.

An immigration judge may not hear or decide the case of an alien excluded from entry under section 235(b)(1).

(4) In considering and deciding cases coming before them, immigration judges may administer oaths and receive evidence, shall determine all applications for discretionary relief which may properly be raised in the proceedings, and shall exercise such discretion conferred upon the Attorney General by law as the Attorney General may specify for the just and equitable disposition of cases coming before such judges.

TITLE II—IMMIGRATION

CHAPTER 1—SELECTION SYSTEM

NUMERICAL LIMITATIONS

SEC. 201 [(a) Exclusive of special immigrants defined in section 101(a)(27), immediate relatives specified in subsection (b) of this section, and aliens who are admitted or granted asylum under section 207 or 208, the number of aliens born in any foreign state or dependent area who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence, shall not in any of the first three quarters of any fiscal year exceed a total of seventy-two thousand and shall not in any fiscal year exceed two hundred and seventy thousand: *Provided*, That to the extent that in a particular fiscal year the number of aliens who are issued immigrant visas or who may otherwise acquire the status of aliens lawfully admitted for permanent residence, and who are subject to the numerical limitations of this section, together with the aliens who adjust their status to aliens lawfully admitted for permanent residence pursuant to subparagraph (H) of section 101(a)(27) or section 19 of the Immigration and Nationality Amendments Act of 1981, exceed the annual numerical limitation in effect pursuant to this section for such year, the Secretary of State shall reduce to such extent the annual numerical limitation in effect pursuant to this section for the following fiscal year.] *(a) Exclusive of special immigrants defined in section 101(a)(27), immigrants born to permanent resident aliens during a temporary visit abroad, immediate relatives specified in subsection (b) of this section, immigrants admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent who is such an immediate relative, aliens who are admitted or granted asylum under section 207 or 208, aliens provided records of permanent residence under section 214(d), and aliens whose status is adjusted to permanent resident status under section 245A, aliens born in a foreign state or dependent area who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence are limited to—*

(1) family reunification immigrants described in section 203(a) and immigrants admitted under section 211(a) on the

basis of a prior issuance of a visa to their accompanying parent under section 203(a), in a number not to exceed in any fiscal year the number equal to (A) three hundred and fifty thousand, minus (B) the sum of (i) the number of immediate relatives specified in subsection (b) of this section who in the previous fiscal year were issued immigrant visas or otherwise acquired the status of aliens lawfully admitted to the United States for permanent residence, (ii) the number of immigrants admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent who is such an immediate relative, (iii) the number of immigrants born to permanent resident aliens during a temporary visit abroad, and (iv) the number of aliens who in the previous fiscal year were provided records of permanent residence under section 214(d), plus (C) the differences (if any) between the maximum number of visas which may be issued under paragraph (2) during the prior fiscal year and the number of visas issued under that paragraph during that year, and not to exceed in any of the first three quarters of any fiscal year 27 per centum of the numerical limitation for all of such fiscal year, and

(2) independent immigrants described in section 203(b) and immigrants admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(b), in a number not to exceed in any fiscal year the number equal to (A) seventy-five thousand, minus (B) the number of special immigrants (other than those described in section 101(a)(27)(A)) who in the previous fiscal year were issued immigrant visas or otherwise acquired the status of aliens lawfully admitted to the United States for permanent residence, plus (C) the difference (if any) between the maximum number of visas which may be issued under paragraph (1) during the prior fiscal year and the number of visas issued under that paragraph during that year, and not to exceed in any of the first three quarters of any fiscal year 27 per centum of the numerical limitation for all of such fiscal year.

* * * * * * *

NUMERICAL LIMITATION TO ANY SINGLE FOREIGN STATE

SEC. 202. [(a) No person] *(a)(1) Except as specifically provided in paragraph (2) of this subsection and in section 101(a)(27), 201(b), 203, and 214(d), no person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of his race, sex, nationality, place of birth, or place of residence,* [, execpt as specifically provided in section 101(a)(27), section 201(b), and section 203: *Provided,* That the total number of immigrant visas made available to natives of any single foreign state under paragraphs (1) through (7) of section 203(a) shall not exceed 20,000 in any fiscal year: *And provided further,* That to the extent that in a particular fiscal year the number of such natives who are issued immigrant visas or who may otherwise acquire the status of aliens lawfully admitted for permanent residence and who are subject to the numerical limitation of this section, together with the aliens from the same foreign state who adjust their status to aliens lawfully admitted for permanent resident pursuant to subparagraph (H) of section 101(a)(27) or section 19 of the Immigration and Nationality Amendments Act of 1981, exceed the numerical limitation in effect for such year pursuant to this section, the Secretary shall reduce to such extent the numerical limitation in effect for the natives of the same foreign state pursuant to this section for the following fiscal year].

(2)(A) Except as provided in subparagraph (B), the total number of natives of any single foreign state who are issued immigrant visas or may otherwise acquire the status of an alien lawfully admitted for permanent residence under subsections (a) and (b) of section 203 or who are admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under subsection (a) or (b) of section 203 shall not exceed in any fiscal year—

(i) twenty thousand, in the case of any foreign state other than a foreign state contiguous to the United States, or

(ii) forty thousand (or the number determined under subparagraph (C)), in the case of any foreign state contiguous to the United States.

(B) If in a fiscal year the total number of immediate relatives specified in section 201(b), immigrants admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent who is such an immediate relative, aliens provided records of permanent residence under section 214(d), and special immigrants defined in section 101(a)(27) (other than those described in subparagraph (A) thereof) who were issued immigrant visas or otherwise acquired the status of aliens lawfully admitted to the United States for permanent residence who are natives of particular foreign state exceeded twenty thousand, then the numerical limitation applicable to that state in the following fiscal year under subparagraph (A) shall be reduced by the amount of such excess.

(C) If in any fiscal year the number of aliens chargeable to a contiguous foreign state who are issued immigrant visas or otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence is less than forty thousand, then in the following fiscal year the number to be used in clause (ii) of subparagraph (A) for the other contiguous foreign state shall be forty thousand plus the amount of the difference.

* * * * * * *

[(e) Whenever the maximum number of visas have been made available under section 202 to natives of any single foreign state as defined in subsection (b) of this section or any dependent area as defined in subsection (c) of this section in any fiscal year, in the next following fiscal year a number of visas, not to exceed 20,000, in the case of a foreign state or 600 in the case of a dependent area, shall be made available and allocated as follows:

[(1) Visas shall first be made available, in a number not to exceed 20 per centum of the number specified in this subsection, to qualified immigrants who are the unmarried sons or daughters of citizens of the United States.

[(2) Visas shall next be made available, in a number not to exceed 26 per centum of the number specified in this subsection, plus any visas not required for the classes specified in paragraph (1), to qualified immigrants who are the spouses, unmarried sons, or unmarried daughters of an alien lawfully admitted for permanent residence.

[(3) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in this subsection, to qualified immigrants who are members of the professions, or who because of their exceptional ability in the sciences or the arts will substantially benefit prospectively the national economy, cultural interests, or welfare of the United States, and whose services in the professions, sciences, or arts are sought by any employer in the United States.

[(4) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in this subsection, plus any visas not required for the classes specified in paragraphs (1) through (3), to qualified immigrants who are the married sons or the married daughters of citizens of the United States.

[(5) Visas shall next be made available, in a number not to exceed 24 per centum of the number specified in this subsection, plus any visas not required for the classes specified in paragraphs (1) through (4), to qualified immigrants who are the brothers or sisters of citizens of the United States, provided such citizens are at least twenty-one years of age.

[(6) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in this subsection, to qualified immigrants capable of performing specified skilled or unskilled labor, not of a temporary or seasonal nature, for which a shortage of employable and willing persons exists in the United States.

[(7) Visas so allocated but not required for the classes specified in paragraphs (1) through (6) shall be made available to other qualified immigrants strictly in the chronological order in which they qualify.]

ALLOCATION OF IMMIGRANT VISAS

SEC. 203. [(a) Aliens who are subject to the numerical limitations specified in section 201(a) shall be allotted visas as follows:

[(1) Visas shall be first made available, in a number not to exceed 20 per centum of the number specified in section 201(a), to qualified immigrants who are the unmarried sons or daughters of citizens of the United States.

[(2) Visas shall next be made available, in a number not to exceed 26 per centum of the number specified in section 201(a), plus any visas not required for the classes specified in paragraph (1), to qualified immigrants who are the spouses, unmarried sons or unmarried daughters of an alien lawfully for permanent residence.

[(3) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in section 201(a), to qualified immigrants who are members of the professions, or who because of their exceptional ability in the sciences or the arts will substantially benefit prospectively the national economy, cultural interests, or welfare of the United States, and whose services in the professions, sciences, or arts are sought by an employer in the United States.

[(4) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in section 201(a), plus any visas not required for the classes specified in paragraphs (1) through (3), to qualified immigrants who are the married sons or the married daughters of citizens of the United States.

[(5) Visas shall next be made available, in a number not to exceed 24 per centum of the number specified in section 201(a), plus any visas not required for the classes specified in paragraphs (1) through (4), to qualified immigrants who are the brothers or sisters of citizens of the United States, provided such citizens are at least twenty-one years of age.

[(6) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in section 201(a), to qualified immigrants who are capable of performing specified skilled or unskilled labor, not of a temporary or seasonal nature, for which a shortage of employable and willing persons exists in the United States.

[(7) Visas authorized in any fiscal year, less those required for issuance to the classes specified in paragraphs (1) through (6), shall be made available to other qualified immigrants strictly in the chronological order in which they qualify. Waiting lists of applicants shall be maintained in accordance with regulations prescribed by the Secretary of State. No immigrant visa shall be issued to a nonpreference immigrant under this paragraph, or to an immigrant with a preference under paragraph (3) or (6) of this subsection, until the consular officer is in receipt of a determination made by the Secretary of Labor pursuant to the provisions of section 212(a)(14). No immigrant visa shall be issued under this paragraph to an adopted child or prospective adopted child of a United States citizen or lawful resident alien unless (A) a valid home-study has been favorably recommended by an agency of the State of the child's proposed residence, or by an agency authorized by the State to conduct such a study, or, in the case of a child adopted abroad, by an appropriate public or private adoption agency which is licensed in the United States; and (B) the child has been irrevocably released for immigration and adoption: *Provided*, That no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act. No immigrant visa shall otherwise be issued under this paragraph to an unmarried child under the age of sixteen except a child who is accompanying or following to join his natural parent.

[(8) A spouse or child as defined in section 101(b)(1) (A), (B), (C), (D), or (E) shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under paragraph (1) through (7), be entitled to the same status, and the same order of consideration provided in subsection (b), if accompanying, or following to join, his spouse or parent.]

(a) PREFERENCE ALLOCATION FOR FAMILY REUNIFICATION IMMIGRANTS.—Aliens subject to the numerical limitation specified in section 201(a)(1) for family reunification immigrants shall be allotted visas as follows:

(1) UNMARRIED SONS AND DAUGHTERS OF CITIZENS.—Qualified immigrants who are the unmarried sons or daughters of citizens of the United States shall be allocated visas in a number not to exceed 15 per centum of such numerical limitation, plus any visas not required for the class specified in paragraph (4).

(2) SPOUSES AND CHILDREN OF PERMANENT RESIDENT ALIENS.—Qualified immigrants who are the spouses or children of an alien lawfully admitted for permanent residence or who (A) as of May 27, 1982, had received approval of a petition made on their behalf for preference status by reason of the relationship described in this paragraph as in effect on such date, and (B) continue to qualify under the terms of the Act as in effect on such date shall be allocated visas in a number not to exceed 65 per centum of such numerical limitation, plus any visas not required for the class specified in paragraph (1).

(3) MARRIED SONS AND DAUGHTERS OF CITIZENS.—Qualified immigrants who are the married sons or married daughters of citizens of the United States shall be allocated visas in a number not to exceed 10 per centum of such numerical limitation, plus any visas not required for the classes specified in paragraphs (1) and (2).

(4) UNMARRIED BROTHERS AND SISTERS OF CITIZENS AND PREVIOUS FIFTH PREFERENCE.—

(A) Qualified immigrants who are the unmarried brothers or sisters of citizens of the United States, if such citizens are at least twenty-one years of age, and

(B) qualified immigrants who (i) as of the date of enactment of the Immigration Reform and Control Act of 1983 had received approval of a petition made on their behalf for preference status by reason of the relationship described in paragraph (5) of section 203(a) of this Act as in effect on the day before such date, and (ii) continue to qualify under the terms of this Act as in effect on the day before such date,

shall be allocated visas in a number not to exceed 10 per centum of such numerical limitation, plus any visas not required for the classes specified in paragraphs (1) through (3).

(b) PREFERENCE AND NONPREFERENCE ALLOCATION FOR INDEPENDENT IMMIGRANTS.—Aliens subject to the numerical limitation specified in section 201(a)(2) for independent immigrants shall be allocated visas as follows:

(1) ALIENS WHO ARE MEMBERS OF THE PROFESSIONS HOLDING DOCTORAL DEGREES OR ALIENS OF EXCEPTIONAL ABILITY.—Qualified immigrants who are members of the professions holding doctoral degrees (or the equivalent degree) or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States, shall be allocated visas. The Attorney General may, when he deems it to be in the national interest, waive the requirement of the preceding sentence that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States. In de-

termining under this paragraph whether an immigrant has exceptional ability, the possession of a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning or a license to practice or certification for a particular profession or occupation shall not by itself be considered sufficient evidence of such exceptional ability.

(2) Skilled workers.—Qualified immigrants who are capable of performing skilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States, shall be allocated any visas not required for the classes specified in paragraph (1).

(3) Investors.—Qualified immigrants who have invested, or established to the Attorney General their intention to invest, substantial capital (in an amount set by the Attorney General and not less than $250,000) in an enterprise in the United States of which the alien will be a principal manager and which will benefit the United States economy and create full-time employment for not fewer than four eligible individuals (as defined in section 214(c)(3)(D)), other than the spouse or children of such immigrant, shall be allocated any visas not required for the classes specified in paragraphs (1) and (2), but in a number not to exceed 10 per centum of such numerical limitation.

(4) Nonpreference aliens.—Visas authorized in any fiscal year under section 201(a)(2), less those required for issuance to the classes specified in paragraphs (1) through (3), shall be made available to other qualified immigrants in the chronological order in which they qualify. No immigrant visa shall be issued under this paragraph to an adopted child or prospective adopted child of a United States citizen or lawfully resident alien unless (A) a valid home study has been favorably recommended by an agency of the State of the child's proposed residence, or by an agency authorized by that State to conduct such a study, or, in the case of a child adopted aboard, by an appropriate public or private adoption agency which is licensed in the United States, and (B) the child has been irrevocably released from immigration and adoption. No natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act. No immigrant visa shall otherwise be issued under this paragraph to an unmarried child under the age of sixteen except a child who is accompanying or following to join his natural parent.

An immigrant visa shall not be issued to an immigrant under paragraph (1), (2), or (4) until the consular officer is in receipt of a determination made by the Secretary of Labor pursuant to the provisions of section 212(a)(14). The provisions of section 212(d)(11) shall apply with respect to any alien petitioning to be classified as a preference immigrant under paragraph (1).

(c) Guide for Allocation Between Preference Systems.—When it is determined that the maximum number of visas will be made available under section 202(a)(2) to natives of any single foreign state (defined in section 202(b)) or any dependent area (defined in section 202(c)) in any fiscal year; in determining whether to pro-

vide for visas to such natives under the preference system described in subsection (a) or that described in subsection (b), visa numbers with respect to natives of that state shall be allocated (to the extent practicable and otherwise consistent with this section) in a manner so that the ratio of—

(1) the sum of (A) the number of family reunification immigrants described in subsection (a), and (B) the number of immediate relatives specified in section 201(b), immigrants born to permanent residents during a temporary visit abroad, immigrants admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent who is such an immediate relative or under section 203(a), and aliens provided records of permanent residence under section 214(d), who are natives of such state and who are issued immigrant visas or otherwise acquire the status of aliens lawfully admitted to the United States for permanent residence in that fiscal year, to

(2) the sum of (A) the number of independent immigrants described in subsection (b), and (B) the number of special immigrants defined in section 101(a)(27) (other than those described in subparagraph (A) thereof) and immigrants admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(b), who are natives of such state and who are issued immigrant visas or otherwise acquire the status of aliens lawfully admitted to the United States for permanent residence in this fiscal year,

is equal to 4.65 to 1.

(d)(1) A spouse or child as defined in subparagraph (A), (B), (C), (D), or (E) of section 101(b)(1) shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under subsection (a) or (b), be entitled to the same status, and the same order of consideration provided in the respective subsection, if accompanying or following to join, his spouse or parent.

(2) Waiting lists of applicants for visas under this section shall be maintained in accordance with regulations prescribed by the Secretary of State.

[(b)**]** *(e)* In considering applications for immigrant visas under subsection (a) *or under subsection (b)* consideration shall be given to applicants in the order in which the classes of which they are members are listed in **[**subsection (a)**]** *the respective subsection.*

[(c)**]** *(f)* Immigrant visas issued pursuant to **[**paragraphs (1) through (6) of**]** subsection (a) *or pursuant to paragraphs (1) through (3) of subsection (b)* shall be issued to eligible immigrants in the order in which a petition in behalf of each such immigrant is filed with the Attorney General as provided in section 204.

[(d)**]** *(g)* Every immigrant shall be presumed to be a nonpreference immigrant until he establishes to the satisfaction of the consular officer and the immigration officer that he is entitled to a preference status under **[**paragraphs (1) through (6) of**]** subsection (a) *or paragraphs (1) through (3) of subsection (b),* or to a special immigrant status under section 101(a)(27), or that he is an immediate relative of a United States citizen as specified in section 201(b). In the case of any alien claiming in his application for an immigrant visa to be an immediate relative of a United States citizen as specified in section 201(b) or to be entitled to preference immigrant status under [paragraphs (1) through (6) of] (a) or *paragraphs (1) through (4) of subsection (b)*, the consular officer shall not grant such status until he has been authorized to do so as provided by section 204.

[(e)] *(h)* For the purposes of carrying out his responsibilities in the orderly administration of this section, the Secretary of State is authorized to make reasonable estimates of the anticipated numbers of visas to be issued during any quarter of any fiscal year within each of the categories of subsection (a), and to rely upon such estimates in authorizing the issuance of such visas. The Secretary of State shall terminate the registration of any alien who fails to apply for an immigrant visa within one year following notification to him of the availability of such visa, but the Secretary shall reinstate the registration of any such alien who establishes within two years following notification of the availability of such visa that such failure to apply was due to circumstances beyond his control. Upon such termination the approval of any petition approved pursuant to section 204(b) shall be automatically revoked.

PROCEDURE FOR GRANTING IMMIGRANT STATUS

SEC. 204. (a) Any citizen of the United States claiming that an alien entitled to a preference status by reason of a relationship described in [paragraph (1), (4), or (5) of section 203(a)] *paragraph (1), (3), or (4) of section 203(a)*, or to an immediate relative status under section 201(b), or any alien lawfully admitted for permanent residence claiming that an alien is entitled to a preference status by reason of the relationship described in section 203(a)(2) or any alien desiring to be classified as a preference immigrant under [section 203(a)(3)] *paragraph (1) or (3) of section 203(b)* (or any person on behalf of such an alien), or any person desiring and intending to employ within the United States an alien entitled to classification as a preference immigrant under [section 203(a)(6)] *paragraph (2) or (4) of section 203(b)*, may file a petition with the Attorney General for such classification. The petition shall be in such form as the Attorney General may by regulations prescribe and shall contain such information and be supported by such documentary evidence as the Attorney General may require. The petition shall be made under oath administered by any individual having authority to administer oaths, if excuted in the United States, but, if executed outside the United States, administered by a consular officer or an immigration officer.

(b) After an investigation of the facts in each case, and after consultation with the Secretary of Labor with respect to petitions to accord a status under [section 203(a)(3) or (6)] *parapraph (1), (2), or (4) of section 203(b)*, the Attorney General shall, if he determines that the facts stated in the petition are true and that the alien in behalf of whom the petition is made is an immediate relative specified in section 201(b) or is eligible for a preference status under section 203(a), approve the petition and forward one copy thereof to the Department of State. The Secretary of State shall then authorize the consular officer concerned to grant the preference status.

(c) Notwithstanding the provisions of subsection (b) no petition shall be approved if the alien has previously been accorded a nonquota or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws.

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[(f) The provisions of this section shall be applicable to qualified immigrants specified in paragraphs (1) through (6) of section 202(e).]

* * * * * * *

ASYLUM PROCEDURE

SEC. 208. [(a) The Attorney General shall establish a procedure for an alien physically present in the United States or at a land border or port of entry, irrespective of such alien's status, to apply for asylum, and the alien may be granted asylum in the discretion of the Attorney General if the Attorney General determines that such alien is a refugee within the meaning of section 101(a)(42)(A).]

(a)(1)(A) Except as provided in subparagraph (B), any alien physically present in the United States or at a land border or port of entry may apply for asylum in accordance with this section.

(B)(i) An alien against whom exclusion or deportation proceedings have been instituted may not file a notice of intention to apply for asylum more than fourteen days, nor perfect such application for asylum more than thirty-five days, after the date of the service of the notice instituting such proceedings unless the alien can make a clear showing, to the satisfaction of the immigration judge conducting the proceeding, that changed circumstances in the country of the alien's nationality (or, in the case of an alien having no nationality, the country of the alien's last habitual residence), between the date of notice instituting the proceeding and the date of application for asylum, have resulted in a change in the alien's eligibility for asylum.

(ii) An alien who has previously applied for asylum and had such application denied may not again apply for asylum unless the alien can make a clear showing that changed circumstances in the country of the alien's nationality (or, in the case of the alien having no nationality, the country of the alien's last habitual residence), between the date of the previous denial of asylum and the date of the subsequent application for asylum, have resulted in a change in the alien's eligibility for asylum.

(2) Applications for asylum shall be considered before immigration judges who are specially designated by the United States Immigration Board as having special training in international relations and international law. The Attorney General shall provide special training in international relations and international law for individuals who served as special inquiry officers before the date of enactment of the Immigration Reform and Control Act of 1983 in order to qualify such individuals to hear applications under this section.

(3)(A) A hearing on the asylum application shall be closed to the public, unless the applicant requests that it be open to the public. To the extent practicable, the hearing shall be conducted in a nonadversarial, informal manner, except that the applicant is entitled to be assisted by counsel (in accordance with section 292), to present evidence, and to examine and cross-examine witnesses. A complete record of the proceedings and of all testimony and evidence produced at the hearing shall be kept. The determination of the immigration judge shall be based only on the evidence produced at the hearing.

(B)(i) The Secretary of State shall on a continuing basis make available information on human rights in all countries to the Attorney General and to immigration judges who hear applications under this section. The immigration judges shall use such information, if available without delay to the proceedings, as general guidelines in making the asylum determination.

(ii) The Attorney General shall provide notice to the Secretary of State whenever an application for asylum is filed under this section. The Secretary of State may submit comments to the immigration judge on such application, but the immigration judge shall not delay the proceeding in order to receive such comments.

(4) The Attorney General may, in his discretion, grant an alien asylum only if the immigration judge determines that the alien (A) is a refugee within the meaning of section 101(a)(42)(A), and (B) does not meet a condition described in one of the subparagraphs of section 243(h)(2).

(5) The burden of proof shall be upon the alien applying for asylum to establish the alien's eligibility for asylum.

(6) After making a determination on an application for asylum under this section, an immigration judge may not reopen the proceeding at the request of the applicant except upon a clear showing that, since the date of such determination, changed circumstances in the country of the alien's nationality (or, in the case of an alien having no nationality, the country of the alien's last habitual residence) have resulted in a change in the alien's eligibility for asylum.

(b) Asylum granted under subsection (a) may be terminated if the Attorney General, pursuant to such regulations as the Attorney general may prescribe, determines that the alien *(1)* is no longer a refugee within the meaning of section 101(a)(42)(A) owing to a change in circumstances in the alien's country of nationality or, in the case of an alien having no nationality, in the country in which the alien last habitually resided, *or (2) meets a condition described in one of the subparagraphs of section 243(h)(2).*

(c) A spouse or child (as defined in section 101(b)(1) (A), (B), (C), (D), or (E) of an alien who is granted asylum under such subsection, (a) may, if not otherwise eligible for asylum under such subsection, be granted the same status as the alien if accompanying, or following to join, such alien.

(d) The procedures set forth in this section shall be the sole and exclusive procedure for determining asylum.

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CHAPTER 2—QUALIFICATIONS FOR ADMISSION OF ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

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GENERAL CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND EXCLUDED FROM ADMISSION; WAIVERS OF INADMISSIBILITY

SEC. 212. (a) Except as otherwise provided in this Act, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States:

(1) * * *

* * * * * * *

(14) Aliens seeking to enter the United States, for the purpose of performing skilled or unskilled labor, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that [(A) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of aliens who are members of the teaching profession or who have exceptional ability in the sciences or the arts), and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and (B) the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed. The exclusion of aliens under this paragraph shall apply to preference immigrant aliens described in section 203(a) (3) and (6), and to nonpreference immigrant aliens described in section 203(a)(7);] *(A) there are not sufficient qualified workers available in the United States in the occupations in which the aliens will be employed; (B) sufficient workers in the United States could not within a reasonable period of time be trained for such occupations by (or through funds provided by) potential employers; and (C) the employment of aliens in such occupations will not adversely affect the wages and working conditions of workers in the United States who are similarly employed. In making such determinations of the Secretary of Labor may use labor market information without reference to the specific job opportunity for which certification is requested. An alien on behalf of whom a certification is sought must have an offer of employment from an employer in the United States. The exclusion of aliens under this paragraph shall only apply to preference immigrants described in section 203(b) (1) and (2) and to nonpreference immigrants described in section 203(b)(4). Decisions of the Secretary of Labor made pursuant to this paragraph, including the issuance and content of regulations and the use of labor market information under this paragraph, shall be reviewable by an appropriate district court of the United States, but the court shall not set aside such a decision unless there is compelling evidence that the Secretary made such decision in an arbitrary and capricious manner;*

* * * * * * *

(d)(1) The provisions of paragraphs (11) and (25) of subsection (a) shall not be applicable to any alien who in good faith is seeking to enter the United States as a nonimmigrant.

* * * * * * *

(11) The requirement in paragraph (14) of subsection (a) relating to an offer of employment from an employer in the United States may be waived with respect to any alien seeking to enter the United States as an immigrant under section 203(b)(1), if the Attorney General deems it to be in the national interest.

(e) No person *(1)* admitted under section 101(a)(15)(J) or acquiring such status after admission (i) whose participation in the program for which he came to the United States was financed in whole or in part, directly or indirectly, by an agency of the Government of the United States or by the government of the country of his nationality or his last residence, (ii) who at the time of admission or acquisition of status under section 101(a)(15)(J) was a national or resident of a country which the Secretary of State pursuant to regulations prescribed by him, had designated as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was engaged, or (iii) who came to the United States or acquired such status in order to receive graduate medical education or training, *or (2) admitted under section 101(a)(15) (F) or (M) or acquiring such status after admission,* shall be eligible to apply for an immigration visa, or for permanent residence, or for a nonimmigrant visa under section 101(a)(15)(H) or section 101(a)(15)(L) until it is established that such person has resided and been physically present in the country of his nationality or his last residence for an aggregate of at least two years following department from the United States: *Provided,* That upon the favorable recommendation of the Secretary of State, pursuant to the request of an interested United States Government agency, or of the Commissioner of Immigration and Naturalization after he has determined that departure from the United States would impose exceptional hardship upon the alien's spouse or child (if such spouse or child is a citizen of the United States or a lawfully resident alien), or that the alien cannot return to the country of his nationality or last residence because he would be subject to persecution on account of race, religion, or political opinion, the Attorney General may waive the requirement of such two-year foreign residence abroad in the case of any alien whose admission to the United States is found by the Attorney General to be in the public interest: *And provided further,* That, except in the case of an alien described in clause **[**(iii)**]** *(1)(iii) or clause (2),* the Attorney General may, upon the favorable recommendation of the Secretary of State, waive such two-year foreign residence requirement in any case in which the foreign country of the alien's nationality or last residence has furnished the Secretary of State a statement in writing that it has no objection to such waiver in the case of such alien*: And provided further, That the Attorney General may, if he determines it to be in the public interest, waive such two-year foreign residence requirement—*

(A) in the case of an alien admitted under section 101(a)(15)(F) who has obtained a degree in a natural science,

mathematics, computer science, or an engineering field from a college or university in the United States, who is applying for a visa as an immigrant described in section 202(b)(1), and (i) who has been offered a position on the faculty of such an institution teaching in the field in which he obtained such degree, up to a limit of one thousand five hundred such waivers per year, or (ii) who has been offered a research or technical position by a United States employee in the field in which he obtained such degree, up to a limit of four thousand five hundred such waivers per year, or

(B) in the case of an alien admitted under section 101(a)(15)(F) who has obtained a degree in a natural science, computer science, or in a field of engineering or business, who is applying for a visa as a nonimmigrant described in section 101(a)(15)(H)(iii), and who will receive no more than four years of training by a United States firm, corporation, or other legal entity, which training will enable such alien to return to the country of his nationality or last residence and be employed there as a manager by the same firm, corporation, or other legal entity, or a branch, subsidiary, or affiliate thereof.

* * * * * * *

(l)(1) The Attorney General and the Secretary of State are authorized to establish a pilot program (hereafter in this subsection referred to as the "program") under which the requirement of paragraph (26)(B) of subsection (a) may be waived by the Attorney General and the Secretary of State, acting jointly and in accordance with this subsection, in the case of an alien who—

(A) is applying for admission during the pilot program period (as defined in paragraph (5)) as a nonimmigrant visitor (described in section 101(a)(15)(B)) for a period not exceeding ninety days;

(B) is a national of a country which—

(i) extends (or agrees to extend) reciprocal privileges to citizens and nationals of the United States, and

(ii) is designated as a pilot country under paragraph (3);

(C) before such admission completes such immigration form as the Attorney General shall establish under paragraph (2)(C) and executes a waiver of review and appeal described in paragraph (2)(D);

(D) has a round-trip, nonrefundable, nontransferable, open-dated transportation ticket which—

(i) is issued by a carrier which has entered into an agreement described in paragraph (4), and

(ii) guarantees transport of the alien out of the United States at the end of the alien's visit; and

(E) has been determined not to represent a threat to the welfare, safety, or security of the United States;

except that no such alien may be admitted without a visa pursuant to this subsection if the alien failed to comply with the conditions of any previous admission as a nonimmigrant.

(2)(A) The program may not be put into operation until the end of the thirty-day period beginning on the date that the Attorney General submits to the Congress a certification that the screening and

monitoring system described in subparagraph (b) is operational and that the form described in subparagraph (C) has been produced.

(B) The Attorney General in cooperation with the Secretary of State shall develop and establish an automated data arrival and departure control system to screen and monitor the arrival into and departure from the United States of nonimmigrant visitors receiving a visa waiver under the program.

(C) The Attorney General shall develop a form for use under the program. Such form shall be consistent and compatible with the control system developed under subparagraph (B). Such form shall provide for, among other items—

(i) a summary description of the conditions for excluding nonimmigrant visitors from the United States under subsection (a) and this subsection.

(ii) a description of the conditions of entry with a waiver under this subsection, including the limitation of such entry to ninety days and the consequences of failure to abide by such conditions, and

(iii) questions for the alien to answer concerning any previous denial of the alien's application for a visa.

(D) An alien may not be provided a waiver under this subsection unless the alien has waived any right (i) to review or appeal under the Act of an immigration officer's determination as to the admissibility of the alien at the port of entry into the United States or (ii) to contest, other than on the basis of an application for asylum, any action for deportation against the alien.

(3)(A) The Attorney General and the Secretary of State acting jointly may designate up to eight countries as pilot countries for purposes of this subsection.

(B) For the period beginning after the thirty-day period described in paragraph (2)(A) and ending on the last day of the first fiscal year which begins after such thirty-day period, a country may not be designated as a pilot country unless the sum of the total number of refusals during the fiscal year ending immediately before such thirty-day period of nonimmigrant visitor visas for nationals of that country was less than 2.0 per centum of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during such fiscal year.

(C) For each fiscal year (within the pilot program period) after the period specified in subparagraph (B)—

(i) in the case of a country which was a pilot country in the previous fiscal year, a country may not be designated as a pilot country unless the sum of—

(I) the total of the number of nationals of that country who were excluded from admission or withdrew their application for admission during such previous fiscal year as a nonimmigrant visitor, and

(II) the total number of nationals of that country who were admitted as nonimmigrant visitors during such previous fiscal year and who violated the terms of such admission,

was less than 2.0 per centum of the total number of national of that country who applied for admission as nonimmigrant visitors during such previous fiscal year, or *(ii) in the case of another country, the country may not be designated as a pilot country unless the total number of refusals during the previous fiscal year of nonimmigrant visitor visas for nationals of that country was less than 2.0 per centum of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during such pervious fiscal year.*

(4) The agreement referred to in paragraph (1)(D)(i) is an agreement between a carrier and the Attorney General under which the carrier agrees, in consideration of the waiver of the visa requirement with respect to a nonimmigrant visitor under this subsection—

(A) to indemnify the United States against any costs for the transportation of the alien from the United States if the visitor is refused admission to the United States or remains in the United States unlawfully after the ninety-day period described in paragraph (1)(A)(i), and

(B) to submit daily to immigration officers any immigration forms received with respect to nonimmigrant visitors provided a waiver under this subsection.

The Attorney General may terminate such an agreement with five days' notice to the carrier for the carrier's failure to meet the terms of such agreement.

(5) For purposes of this subsection, the term "pilot program period" means the period beginning at the end of the thirty-day period referred to in paragraph (2)(A) and ending on the last day of the third fiscal year which begins after such thirty-day period

ADMISSION OF NONIMMIGRANTS

SEC. 214. (a) The admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the Attorney General may by regulations prescribe, including when he deems necessary the giving of a bond with sufficient surety in such sum and containing such conditions as the Attorney General shall prescribe, to insure that at the expiration of such time or upon failure to maintain the status under which he was admitted, or to maintain any status subsequently acquired under section 248, such alien will depart from the United States. *No alien admitted to the United States without a visa pursuant to section 212(l) may be authorized to remain in the United States as a nonimmigrant visitor for a period exceeding 90 days from the date of admission. An alien may not be admitted to the United States as a nonimmigrant under section 101(a)(15)(H)(ii)(a) for an aggregate period of more than eight months in any calendar year, except in the case of agricultural labor or services which the Secretary of Labor, before the date of the enactment of the Immigration Reform and Control Act of 1983, has recognized require a longer period, which may exceed one year. An alien who was admitted to the United States as a nonimmigrant under section 101(a)(15)(H)(ii) during the preceding five-year period may not be admitted under that provision if the alien violated the terms of any such previous admission. The Attorney General shall provide for such procedures* *for the entry and exit of nonimmigrants described in section 101(a)(15)(H)(ii) as may be necessary to carry out this section.*

* * * * * * *

(c)*(1)* The question of importing any alien as a nonimmigrant under section 101(a)(15)(H) or (L) in any specific case or specific cases shall be determined by the Attorney General, after consultation with appropriate agencies of the Government, upon petition of the importing employer. Such petition shall be made and approved before the visa is granted. The petition shall be in such form and contain such information as the Attorney General shall prescribe. The approval of such a petition shall not, of itself, be construed as establishing that the alien is a nonimmigrant.

(2)(A) A petition to import an alien as a nonimmigrant under section 101(a)(15)(H)(ii) may not be approved by the Attorney General unless the petitioner has applied to the Secretary of Labor for a certification that—

(i) there are not sufficient workers who are able, willing, qualified, and who will be available at the time and at the place needed to perform the labor or services involved in the petition, and

(ii) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States who are similarly employed.

The Secretary of Labor may require by regulation, as a condition of issuing the certification, the payment of a fee to recover the reasonable costs of processing applications for certification.

(B) The Secretary of Labor may not issue a certification under subparagraph (A) if—

(i) there is a strike or lockout in the course of a labor dispute which, under the regulations, precludes such certification; or

(ii) the employer, during the previous two years, employed nonimmigrant aliens admitted to the United States under section 101(a)(15)(H)(ii) and the Secretary of Labor has determined, after notice and opportunity for a hearing, that the employer during that period substantially violated an essential term or condition of the labor certification with respect to the employment of domestic or nonimmigrant workers or has not paid a penalty (or penalties) for such violations which may be assessed by the Secretary of Labor, except that no employer may be denied certification for more than one year for any such violation.

(3)(A) In the case of an application for a labor certification under section 101(a)(15)(H)(ii)(a)—

(i) the Secretary of Labor may not require that such an application for labor certification be filed more than eighty days before the first date the employer requires the labor or services of the alien;

(ii) the Secretary of Labor shall make, not less than twenty days before the date such labor or services are first required to be performed, the certification described in paragraphs (2)(A)(i) and (ii) if an employer has complied with the criteria for certification, including the recruitment of eligible individuals as prescribed by the Secretary, and the employer does not actually

have, or has not been provided with referrals of, qualified eligible individuals who have agreed to perform such labor or services on the terms and conditions of a job offer which meets the requirements of the Secretary and who are otherwise available, except that the terms of such labor certification shall remain effective only if the employer continues to accept for employment, until the date the aliens depart for work with the employer, qualified eligible individuals who apply to the employer or are referred to the employer; and

(iii) the petition, or the application for a certification, may be filed by an association representing agricultural producers who use agricultural labor or services. The filing of such a petition or application on a member's behalf does not relieve the member of any liability for representations made in such petition or application unless the association is the sole employer of all alien agricultural labor or services, in which case only the association shall be liable for representations made in such petition or application.

(B) The Secretary of Labor shall provide for an expedited procedure for the review of a denial of certification under paragraph (2) in the case of a nonimmigrant described in section 101(a)(15)(H)(ii)(a), or at the applicant's request, a de novo administrative hearing.

(C) The Secretary of Labor shall expeditiously make a new determination on the request for certification in the case of a nonimmigrant described in section 101(a)(15)(H)(ii)(a) if qualified eligible individuals are not actually available at the time such labor or services are required and a certification was denied in whole or in part because of the availability of qualified eligible individuals. If the employer asserts that any eligible individuals who have been referred are not qualified, the burden of proof is on the employer to establish that the individuals referred are not qualified because of employment-related reasons.

(D) For purposes of this paragraph, the term "eligible individual" means, with respect to employment, an individual who is not an unauthorized alien (as defined in section 274A(a)(4)) with respect to that employment.

(4) The Secretary of Labor, in consultation with the Attorney General and the Secretary of Agriculture, shall annually report to the Congress on the certifications provided under this subsection, the impact of aliens admitted pursuant to such certifications on labor conditions in the United States, and on compliance of employers and nonimmigrants with the terms and conditions of such nonimmigrants' admission to the United States.

(5) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1984, $10,000,000 for the purposes (A) of recruiting domestic workers for temporary labor and services which might otherwise be performed by nonimmigrants described in section 101(a)(15)(H)(ii), and (B) of monitoring terms and conditions under which such nonimmigrants (and domestic workers employed by the same employers) are employed in the United States. The Secretary of Labor is authorized to take such actions, including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be nec-

essary to assure employer compliance with terms and conditions of employment under this subsection.

(d) A visa shall not be issued under the provisions of section 101(a)(15)(K) until the consular officer has received a petition filed in the United States by the fiancée or fiancé of the applying alien and approved by the Attorney General. The petition shall be in such form and contain such information as the Attorney General shall, by regulation, prescribe. It shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have a bona fide intention to marry and are legally able and actually willing to conclude a valid marriage in the United States within a period of ninety days after the alien's arrival. In the event the marriage with the petitioner does not occur within three months after the entry of the said alien and minor children, they shall be required to depart from the United States and upon failure to do so shall be deported in accordance with sections 242 and 243. In the event the marriage between the said alien and the petitioner shall occur within three months after the entry and they are found otherwise admissible, the Attorney General shall record the lawful admission for permanent residence of the alien and minor children as of the date of the payment of the required visa fees.

(e) The provisions of subsections (a) and (c) of this section preempt any State or local law regulating the admissibility of nonimmigrant workers.

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CHAPTER 3—ISSUANCE OF ENTRY DOCUMENTS

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APPLICATIONS FOR VISAS

SEC. 222. * * *

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(f)*(1)* The records of the Department of State and of diplomatic and consular offices of the United States pertaining to the issuance or refusal of visas or permits to enter the United States shall be considered confidential and shall be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States, except that in the discretion of the Secretary of State certified copies of such records may be made available to a court which certifies that the information contained in such records is needed by the court in the interest of the ends of justice in a case pending before the court.

(2) The records or any document of the Department of Justice, The Department of State, or any other Government agency, or foreign government, pertaining to the issuance or denial of any application for asylum, refugee status, withholding of deportation under sections 207, 208, and 243(h) of this Act, or any other application arising under a claim of persecution on account of race, religion, political opinion, nationality, or membership in a particular social group, shall be confidential and exempt from disclosure and shall be used only for the formulation, amendment, administration, or enforce-

ment of the immigration, nationality, and other laws of the United States. In the discretion of the Attorney General or the Secretary of State, as the case may be, certified copies of such records may be made available to a court which certifies that the information contained in such records is needed by the court in the interests of the ends of justice in a case pending before the court.

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CHAPTER 4—PROVISIONS RELATING TO ENTRY AND EXCLUSION

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PHYSICAL AND MENTAL EXAMINATION

SEC. 234. The physical and mental examination of arriving aliens (including alien crewmen) shall be made by medical officers of the United States Public Health Service, who shall conduct all medical examinations and shall certify, for the information of the immigration officers and the [special inquiry officers] *immigration judges,* any physical and mental defect or disease observed by such medical officers in any such alien. If medical officers of the United States Public Health Service are not available, civil surgeons of not less than four years' professional experience may be employed for such service upon such terms as may be prescribed by the Attorney General. Aliens (including alien crewmen) arriving at ports of the United States shall be examined by at least one such medical officer or civil surgeon under such administrative regulations as the Attorney General may prescribe, and under medical regulations prepared by the Surgeon General of the United States Public Health Service. Medical officers of the United States Public Health Service who have had special training in the diagnosis of insanity and mental defects shall be detailed for duty or employed at such ports of entry as the Attorney General may designate, and such medical officers shall be provided with suitable facilities for the detention and examination of all arriving aliens who it is suspected may be excludable under paragraphs (1), (2), (3), (4), or (5) of section 212(a), and the services of interpreters shall be provided for such examination. Any alien certified under paragraphs (1), (2), (3), (4), or (5) of section 212(a) may appeal to a board of medical officers of the United States Public Health Service, which shall be convened by the Surgeon General of the United States Public Health Service, and any such alien may introduce before such board one expert medical witness at his own cost and expense.

INSPECTION BY IMMIGRATION OFFICERS

SEC. 235. (a) The inspection, other than the physical and mental examination, of aliens (including alien crewmen) seeking admission or readmission to, or the privilege of passing through the United States shall be conducted by immigration officers, except as otherwise provided in regard to [special inquiry officers] *immigration judges.* All aliens [arriving] *entering* at ports *or at the land borders* of the United States shall be examined by one or more immigration officers at the discretion of the Attorney General and under such regulations as he may prescribe. Immigration officers are hereby authorized and empowered to board and search any vessel, aircraft, railway car, or other conveyance, or vehicle in which they believe aliens are being brought into the United States. The Attorney General and any immigration officers[, including special inquiry officers,] *and any immigration judge* shall have power to administer oaths and to take and consider evidence of or from any person touching the privilege of any alien or person he believes or suspects to be an alien to enter, reenter, pass through, or reside in the United States or concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service, and, where such action may be necessary, to make a written record of such evidence. Any person coming into the United States may be required to state under oath the purpose or purposes for which he comes, the length of time he intends to remain in the United States, whether or not he intends to remain in the United States permanently and, if an alien, whether he intends to become a citizen thereof, and such other items of information as will aid the immigration officer in determining whether he is a national of the United States or an alien and, if the latter, whether he belongs to any of the excluded classes enumerated in section 212. The Attorney General and any immigration officer [, including special inquiry officers,] shall have power to require by subpena the attendance and testimony of witnesses before immigration officers and [special inquiry officers] *immigration judges* and the production of books, papers, and documents relating to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service, and to that end may invoke the aid of any court of the United States. Any United States district court within the jurisdiction of which investigations or inquiries are being conducted by an immigration officer or [special inquiry officer] *immigration judge* may, in the event of neglect or refusal to respond to a subpena issued under this subsection or refusal to testify before an immigration officer or [special inquiry officer] *immigration judge* issue an order requiring such persons to appear before an immigration officer or [special inquiry officer] *immigration judge* produce books, papers, and documents if demanded, and testify, and any failure to obey such order of the court may be punished by the court as a contempt thereof.

[(b) Every alien (other than an alien crewman), and except as otherwise provided in subsection (c) of this section and in section 273(d), who may not appear to the examining immigration officer at the port of arrival to be clearly and beyond a doubt entitled to land shall be detained for further inquiry to be conducted by a special inquiry officer.]

(b)(1) If an examining immigration officer at the port of arrival determines that an alien does not have the documentation required to obtain entry into the United States, does not have any reasonable basis for legal entry into the United States, and has not applied for asylum under section 208, such alien shall not be admissible and shall be excluded from entry into the United States without further inquiry or hearing.

(2) If an examining immigration officer at a port of entry or land border of the United States determines that an alien (other than an alien crewman and except as otherwise provided in subsection (c) of this section and in section 273(d)) is otherwise not clearly and beyond a doubt entitled to land, such alien shall be detained for a hearing on exclusion of the alien to be held before an immigration judge.

(3) The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien, whose privilege to land is so challenged, before [a special unquiry officer for further inquiry] *an immigration judge for an exclusion hearing.*

(4) The Attorney General shall establish procedures, after consultation with the Judiciary Committees of the Congress, which assure that aliens are not excluded under paragraph (1) without an inquiry into their reasons for unlawfully seeking entry into the United States.

(5) In the case of an alien who would be excluded from entry under paragraph (1) but for an application for asylum under section 208, the exclusion hearing with respect to such entry shall be limited to the issues raised by the asylum application.

(c) Any alien (including an alien crewmen) who may appear to the examining immigration officer [or to the special inquiry officer during the examination before either of such officers] *during the examination or an immigration judge during an exclusion hearing* to be excludable under paragraph (27), (28), or (29) of section 212(a) shall be temporarily excluded, and no further [inquiry by a special inquiry officer] *examination or exclusion hearing* shall be conducted until after the case is reported to the Attorney General together with any such written statement and accompanying information, if any, as the alien or his representative may desire to submit in connection herewith and such an [inquiry or further inquiry] *examination or hearing* is directed by the Attorney General. If the Attorney General is satisfied that the alien is excludable under any of such paragraphs on the basis of information of a confidential nature, the disclosure of which the Attorney General, in the exercise of his discretion, and after consultation with the appropriate security agencies of the Government, concludes would be prejudicial to the public interest, safety, or security, he may in his descretion order such alien to be excluded and deported without any [inquiry or further inquiry by a special inquiry officer] *any examination or hearing. Nothing in this subsection shall be regarded as requiring an [inquiry before a special inquiry officer] exclusion hearing before an immigration judge* in the case of an alien crewman.

EXCLUSIONS OF ALIENS

SEC. 236. (a) [A special inquiry officer] *An immigration judge* shall conduct proceedings under this section[, administer oaths, present and receive evidence, and interrogate, examine, and cross-examine the alien or witnesses]. He shall have authority in any case to determine whether an arriving alien who has been detained for [further inquiry] *an exclusion hearing* under section 235 shall be allowed to enter or shall be excluded and deported. The determination of such [special inquiry officer] *immigration judge* shall be based only on the evidence produced at the [inquiry.] *hearing.* [No special inquiry officer shall conduct a proceeding in any case under this section in which he shall have participated in investigative functions or in which he shall have participated (except as provided in this subsection) in prosecuting functions.] Proceedings before [a special inquiry officer] *an immigration law judge* under this section shall be conducted in accordance with this section, the applicable provisions of sections 235 and 287(b), and such [regulations as the Attorney General shall prescribe] *rules as the Chairman of the United States Immigration Board shall establish,* and shall be the sole and exclusive procedure for determining admissibility of a person to the United States under the provisions of this section. At such [inquiry,] *hearing,* which shall be kept separate and apart from the public, the alien may have one friend or relative present, under such conditions as may be prescribed by the Attorney General. A complete record of the proceedings and of all testimony and evidence produced at such [inquiry] hearing, shall be kept.

(b) [From a decision of a special inquiry officer excluding an alien, such alien may take a timely appeal to the Attorney General] *Within fifteen days after the date of a decision of an immigration judge excluding or admitting an alien, the alien or the immigration officer in charge at the port where the hearing is held, respectively, may file an appeal of the decision with the United States Immigration Board in accordance with rules established by the Chairman of the Board,* and any such alien shall be advised of his right to take such appeal. No appeal may be taken from a temporary exclusion under section 235(c). [From a decision of the special inquiry officer to admit an alien, the immigration officer in charge at the port where the inquiry is held may take a timely appeal to the Attorney General.] An appeal by the alien, or such officer in charge, shall operate to stay any final action with respect to any alien whose case is so appealed until the final decision of the [Attorney General] *United States Immigration Board* is made. Except as provided in section 235(c) such decision shall be rendered solely upon the evidence adduced before the [special inquiry officer] *immigration judge.*

(c) Except as provided in subsection (b) or (d), in every case where an alien is excluded from admission into the United States, under this Act or any other law or treaty now existing or hereafter made, the decision of [a special inquiry officer] *an immigration judge* shall be final unless reversed on appeal [to the Attorney General].

(d) If a medical officer or civil surgeon or board of medical officers has certified under section 234 that an alien is afflicted with a disease specified in section 212(a)(6), or with any mental disease, defect, or disability which would bring such alien within any of the classes excluded from admission to the United States under paragraphs (1), (2), (3), (4), or (5) of section 212(a), the decision of the [special inquiry officer] *immigration judge* shall be based solely upon such certification. No alien shall have a right to appeal from such an excluding decision of [a special inquiry officer.] *an immigration judge.* If an alien is excluded by [a special inquiry officer] *an immigration judge* because of the existence of a physical disease, defect, or disability, other than one specified in section 212(a)(6), the alien may appeal from the excluding decision in accordance with subsection (b) of this section, and the provisions of section 213 may be invoked.

IMMEDIATE DEPORTATION OF ALIENS EXCLUDED FROM ADMISSION OR ENTERING IN VIOLATION OF LAW

SEC. 237. (a)(1) Any alien (other than an alien crewman) arriving in the United States who is excluded under this Act, shall be immediately deported, in accommodations of the same class in which he arrived, unless the Attorney General, in an individual case, in his discretion, concludes that immediate deportation is not practicable or proper. Deportation shall be to the country in which the alien boarded the vessel or aircraft on which he [arrived in] *entered* the United States, unless the alien boarded such vessel or aircraft in foreign territory contiguous to the United States or in any island adjacent thereto or adjacent to the United States and the alien is not a native, citizen, subject, or national of, or does not have a residence in, such foreign contiguous territory or adjacent island, in which case the deportation shall instead be to the country in which is located the port at which the island. The cost of the maintenance including detention expenses and expenses incident to detention of any such alien while he is being detained shall be borne by the owner or owners of the vessel or aircraft on which he [arrived] *entered the United States*, except that the cost of maintenance (including detention expenses and expenses incident to detention while the alien is being detained prior to the time he is offered for deportation to the transportation line which brought him to the United States) shall not be assessed against the owner or owners of such vessel or aircraft if (A) the alien was in possession of a valid, unexpired immigrant visa, or (B) the alien (other than an alien crewman) was in possession of a valid, unexpired nonimmigrant visa or other document authorizing such alien to apply for temporary admission to the United States or an unexpired reentry permit issued to him, and (i) such application was made within one hundred and twenty days of the date of issuance of the visa or other document, or in the case of an alien in possession of a reentry permit, within one hundred and twenty days of the date on which the alien was last examined and admitted by the Service, or (ii) in the event the application was made later than one hundred and twenty days of the date of issuance of the visa or other document or such examination and admission, if the owner or owners of such vessel or aircraft established to the satisfaction of the Attorney General that the ground of exclusion could not have been ascertained by the exercise of due diligence prior to the alien's embarkation, or (C) the person claimed United States nationality or citizenship and was in possession of an unexpired United States passport issued to him by competent authority.

(2) If the government of the country designated in paragraph (1) will not accept the alien into its territory, the alien's deportation

shall be directed by the Attorney General, in his discretion and without necessarily giving any priority or preference because of their order as herein set forth, either to—

(A) the country of which the alien is a subject, citizen, or national;

(B) the country in which he was born;

(C) the country in which he has a residence; or

(D) any country which is willing to accept the alien into its territory, if deportation to any of the foregoing countries is impracticable, inadvisable, or impossible.

(b) It shall be unlawful for any master, commanding officer, purser, person in charge, agent, owner, or consignee of any vessel or aircraft (1) to refuse to receive any alien (other than an alien crewman), ordered deported under this section back on board such vessel or aircraft or another vessel or aircraft owned or operated by the same interests; (2) to fail to detain any alien (other than an alien crewman) on board any such vessel or at the [airport of arrival] *port of entry* of the aircraft when required by this Act or if so ordered by an immigration officer, or to fail or refuse to deliver him for medical or other inspection, or for further medical or other inspection, as and when so ordered by such officer; (3) to refuse or fail to remove him from the United States to the country to which his deportation has been directed; (4) to fail to pay the cost of his maintenance while being detained as required by this section or section 233 of this title; (5) to take any fee, deposit, or consideration on a contingent basis to be kept or returned in case the alien is landed or excluded; or (6) knowingly to bring to the United States any alien (other than an alien crewman) excluded or arrested and deported under any provision of law until such alien may be lawfully entitled to reapply for admission to the United States. If it shall appear to the satisfaction of the Attorney General that any such master, commanding officer, purser, person in charge, agent, owner, or consignee of any vessel or aircraft has violated any of the provisions of this section or of section 233 of this title, such master, commanding officer, purser, person in charge, agent, owner, or consignee shall pay to the district director of customs of the district in which port of [arrival] *entry* is situated or in which any vessel or aircraft of the line may be found, the sum of $300 for each violation. No such vessel or aircraft shall have clearance from any port of the United States while any such fine is unpaid or while the question of liability to pay any such fine is being determined, nor shall any such fine be remitted or refunded, except that clearance may be granted prior to the determination of such question upon the deposit with the district director of customs of a bond or undertaking approved by the Attorney General or a sum sufficient to cover such fine.

(c) An alien shall be deported on a vessel or aircraft owned by the same person who owns the vessel or aircraft on which the alien [arrived in] *entered* the United States, unless it is impracticable to so deport the alien within a reasonable time. The transportation expense of the alien's deportation shall be borne by the owner or owners of the vessel or aircraft on which the alien arrived. If the deportation is effected on a vessel or aircraft not owned by such owner or owners, the transportation expense of the alien's deportation may be paid from the appropriation for the enforcement of this Act and recovered by civil suit from any owner, agent, or consignee of the vessel or aircraft on which the alien arrived.

(d) The Attorney General, under such conditions as are by regulations prescribed, may stay the deportation of any alien deportable under this section, if in his judgment the testimony of such alien is necessary on behalf of the United States in the prosecution of offenders against any provision of this Act or other laws of the United States. The cost of maintenance of any person so detained resulting from a stay of deportation under this subsection and a witness fee in the sum of $1 per day for each day such person is so detained may be paid from the appropriation for the enforcement of this title. Such alien may be released under bond in the penalty of not less than $500 with security approved by the Attorney General on condition that such alien shall be produced when required as a witness and for deportation, and on such other conditions as the Attorney General may prescribe.

(e) Upon the certificate of an examining medical officer to the effect that an alien ordered to be excluded and deported under this section is helpless from sickness or mental and physical disability, or infancy, if such alien is accompanied by another alien whose protection or guardianship is required by the alien ordered excluded and deported, such accompanying alien may also be excluded and deported, and the master, commanding officer, agent, owner, or consignee of the vessel or aircraft in which such alien and accompanying alien [arrived in] *entered* the United States shall be required to return the accompanying alien in the same manner as other aliens denied admission and ordered deported under this section.

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CHAPTER 5—DEPORTATION; ADJUSTMENT OF STATUS

GENERAL CLASSES OF DEPORTABLE ALIENS

SEC. 241. (a) Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—

(1) * * *

* * * * * * *

(9)(*A*) was admitted as a nonimmigrant and failed to maintain the nonimmigrant status in which he was admitted or to which it was changed pursuant to section 248, or to comply with the conditions of any such status[;] *, or*

(B) was admitted as an independent immigrant described in paragraph (3) of section 203(b) and by the end of the one-year period following the date of entry failed to invest substantial capital in an enterprise in the United States as required in such paragraph or, having made such investment, has failed without good cause to maintain such an investment for a period of at least one year after the date of such entry or after the date such substantial investment was made, whichever date was later;

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APPREHENSION AND DEPORTATION OF ALIENS

SEC. 242. (a) * * *

(b) [A special inquiry officer] *An immigration judge* shall conduct proceedings under this section to determine the deportability of any alien, and [shall administer oaths, present and receive evidence, interrogate, examine, and cross-examine the alien or witnesses, and as authorized by the Attorney General,] shall make determinations, including orders of deportation. Determination of deportability in any case shall be made only upon a record made in a proceeding before [a special inquiry officer] *an immigration judge,* at which the alien shall have reasonable opportunity to be present, unless by reason of the alien's mental incompetency it is impracticable for him to be present, in which case the [Attorney General shall precribe] *Chairman of the United States Immigration Board shall establish* necessary and proper safeguards for the rights and privileges of such alien. If any alien has been given a reasonable opportunity to be present at a proceeding under this section, and without reasonable cause fails or refuses to attend or remain in attendance at such proceeding, the [special inquiry officer] *immigration judge* may proceed to a determination in like manner as if the alien were present. [In any case or class of cases in which the Attorney General believes that such procedure would be of aid in making a determination, he may require specifically or by regulation that an additional immigration officer] *An immigration officer* shall be assigned to present the evidence on behalf of the United States and [in such case such additional immigration officer] shall have authority to present evidence, and to interrogate, examine and cross-examine the alien or other witnesses in the proceedings. [Nothing in the preceeding sentence shall be construed to diminish the authority conferred upon the special inquiry officer conducting such proceedings. No special inquiry officer shall conduct a proceeding in any case under this section in which he shall have participated in investigative functions or in which he shall have participated (except as provided in this subsection) in prosecuting functions.] Proceedings before [a special inquiry officer] *an immigration judge* acting under the provisions of this section shall be in accordance with [such regulations, not inconsistent with this Act, as the Attorney General shall prescribe] *rules as are established by the Chairman of the United States Immigration Board.* Such [regulations] *rules* shall include requirements that—

(1) the alien shall be given notice, reasonable under all the circumstances, of the nature of the charges against him and of the time and place at which the proceedings will be held;

(2) the alien shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as he shall choose;

(3) the alien shall have a reasonable opportunity to examine the evidence against him, to present evidence in his own behalf, and to cross-examine witnesses presented by the Government; and

(4) no decision of deportability shall be valid unless it is based upon [reasonable, substantial, and probative] *substantial* evidence.

The procedure so prescribed shall be the sole and exclusive procedure for determining the deportability of an alien under this section. In any case in which an alien is ordered deported from the United States under the provisions of this Act, or of any other law or treaty, the decision of the [Attorney General shall be final] *immigration judge shall be final unless reversed on appeal.* In the discretion of the Attorney General, and under such regulations as he may prescribe, deportation proceedings, including issuance of a warrant of arrest, and a finding of deportability under this section need not be required in the case of any alien who admits to belonging to a class of aliens who are deportable under section 241 if such alien voluntarily departs from the United States at his own expense, or is removed at Government expense as hereinafter authorized, unless the Attorney General has reason to believe that such alien is deportable under paragraph (4), (5) (6), (11), (12), (14), (15), (16), (17), (18), or (19) of section 241(a). If any alien who is authorized to depart voluntarily under the preceding sentence is financially unable to depart at his own expense and the Attorney General deems his removal to be in the best interest of the United States, the expense of such removal may be paid from the appropriation for the enforcement of this Act.

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(i) Except as otherwise provided in section 291, in any deportation proceeding under this Act the burden of proof shall be upon the Attorney General to establish deportability by a preponderance of the evidence.

* * * * * * *

COUNTRIES TO WHICH ALIENS SHALL BE DEPORTED; COST OF DEPORTATION

SEC. 243 (a) * * *

* * * * * * *

(h)(1) The Attorney General shall not deport or return any alien (other than an alien described in section 241(a)(19)) to a country if the Attorney General determines that such alien's life or freedom would be threatened in such country on account of race, religion, nationality, membership in a particular social group, or political opinion.

(2) Paragraph (1) shall not apply to any alien if the Attorney General determines that—

(A) the alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;

(B) the alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States;

(C) there are serious reasons for considering that the alien has committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States; or

(D) there are reasonable grounds for regarding the alien as a danger to the security of the United States.

(3) An application for relief under this subsection shall be considered to be an application for asylum under section 208 and shall be considered in accordance with the procedures set forth in that section.

* * * * * * *

ADJUSTMENT OF STATUS OF NONIMMIGRANT TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

SEC. 245. (a) The status of an alien who was inspected and admitted or paroled into the United States may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if (1) the alien makes an application for such adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is filed.

(b) Upon the approval of an application for adjustment made under subsection (a), the Attorney General shall record the alien's lawful admission for permanent residence as of the date the order of the Attorney General approving the application for the adjustment of status is made, and the Secretary of State shall reduce by one the number of the preference or nonpreference visas authorized to be issued under sections [202(e) or] 203(a) within the class to which the alien is chargeable for the fiscal year then current.

(c) The provisions of this section shall not be applicable to (1) an alien crewman; (2) an alien (other than an immediate relative as defined in section 201(b) "or a special immigrant described in section 101(a)(27)(H)) who [hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status] *has failed to maintain continuously a legal status since entry into the United States;* [or] (3) any alien admitted in transit without visa under section 212(d)(4)(C); *or (4) an alien (other than an immediate relative specified in section 201(b) or an alien who has received a waiver of the two-year foreign residence requirement of section 212(e) or, with respect to aliens admitted under section 101(a)(15)(F) before the date of enactment of this Act, who has satisfied the degree and other requirements as would be necessary before such alien would be qualified to apply for such a waiver if the two-year foreign residence requirement were in effect for him) who entered the United States classified as a nonimmigrant under subparagraph (F) or (M) of section 101(a)(15) or who was admitted as a nonimmigrant visitor without a visa under section 212(l).*

ADJUSTMENT OF STATUS OF CERTAIN ENTRANTS BEFORE JANUARY 1, 1980, TO THAT OF PERSON ADMITTED FOR TEMPORARY OR PERMANENT RESIDENCE

SEC. 245A. (a) The Attorney General may, in his discretion and under such regulations as he shall prescribe, adjust the status of an *alien to that of an alien lawfully admitted for permanent residence if—*

(1) the alien applies for such adjustment during the twelve-month period beginning on a date 90 days after the date of enactment of this section, or, in the case of an alien who is the subject of an order to show cause issued under section 242, not later than 30 days after the date of issuance of such order,

(2)(A) the alien (other than an alien who entered as a nonimmigrant) establishes that he entered the United States prior to January 1, 1977, and has resided continuously in the United States in an unlawful status from January 1, 1977, through the date of enactment of the Immigration Reform and Control Act of 1983, or

(B) the alien entered the United States as a nonimmigrant before January 1, 1977, the alien's period of authorized stay as a nonimmigrant expired before January 1, 1977, through the passage of time or the alien's unlawful status was known to the Government as of January 1, 1977, and the alien has resided continuously in the United States in an unlawful status from January 1, 1977, through the date of enactment of the Immigration Reform and Control Act of 1983, and

(C) if the alien was at any time a nonimmigrant exchange alien (as defined in section 101(a)(15)(J)), the alien was not subject to the two-year foreign residence requirement of section 212(e) or has fulfilled that requirement or received a waiver thereof;

(3) the alien was physically present in the United States since the date of enactment of the Immigration Reform and Control Act of 1983; and

(4) the alien—

(A) is admissible to the United States as an immigrant, except as otherwise provided under subsection (c)(2),

(B) has not been convicted of any felony or of three or more misdemeanors committed in the United States, and

(C) has not assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion.

(b)(1) The Attorney General may, in his discretion and under such regulations as he shall prescribe, adjust the status of an alien to that of an alien lawfully admitted for temporary residence if—

(A) the alien applies for such adjustment during the twelve-month period beginning on a date 90 days after the date of enactment of this section, or, in the case of an alien who is the subject of an order to show cause issued under section 242, not later than 30 days after the date of issuance of such order;

(B)(i)(I) the alien (other than an alien who entered as a nonimmigrant) establishes that he entered the United States prior to January 1, 1980, and has resided continuously in the United States in an unlawful status from January 1, 1980, through the date of enactment of the Immigration Reform and Control Act of 1983; or

(II) the alien entered the United States as a nonimmigrant before January 1, 1980, the alien's period of authorized stay as a nonimmigrant expired before January 1, 1980, through the

passage of time or the alien's unlawful status was known to the Government as of January 1, 1980, and the alien has resided continuously in the United States in an unlawful status from January 1, 1980, through the date of enactment of the Immigration Reform and Control Act of 1983; and

(III) if the alien was at any time a nonimmigrant exchange alien (as defined in section 101(a)(15)(J)), the alien was not subject to the two-year foreign residence requirement of section 212(e) or has fulfilled that requirement or received a waiver thereof; or

(ii) the alien is—

(I) a national of Cuba who arrived in the United States and presented himself for inspection after April 20, 1980, and before January 1, 1981, and who is still physically present in the United States;

(II) a national of Haiti who on December 31, 1980, was the subject of exclusion or deportation proceedings under section 236 or section 242 of the Immigration and Nationality Act, including a national of Haiti who on that date was under an order of exclusion and deportation or under an order of deportation which had not yet been executed;

(III) a national of Haiti who was paroled into the United States under section 212(d)(5) of such Act or was granted voluntary departure before December 31, 1980, and was physically present in the United States on that date; or

(IV) a national of Cuba or Haiti who on December 31, 1980, had an application for asylum pending with the Immigration and Naturalization Service;

(C) the alien was physically present in the United States since the date of enactment of the Immigration Reform and Control Act of 1983; and

(D) the alien—

(i) is admissible to the United States as an immigrant, except as otherwise provided under subsection (c)(2),

(ii) has not been convicted of any felony or three or more misdemeanors committed in the United States, and

(iii) has not assisted in the presecution of any person or persons on account of race, religion nationality, membership in a particular social group, or political opinion.

(2) During the period an alien is in the lawful temporary resident status granted under paragraph (1)—

(A) the Attorney General shall permit the alien to return to the United States after such brief and casual trips abroad, in accordance with subsection (d)(3), as reflect an intention on the part of the alien to adjust to lawful permanent resident status under paragraph (3), and

(B) the Attorney General shall grant the alien authorization to engage in employment in the United States and provide to that alien an "employment authorized" endorsement or other appropriate work permit.

(3) The Attorney General, in his discretion and under such regulations as he may prescribe, may adjust the status of any alien provided lawful temporary resident status under paragraph (1) to that of an alien lawfully admitted for permanent residence if the alien—

(A) applies for such adjustment during the six-month period beginning with the first day of the thirty-seventh month that begins after the date the alien was granted such temporary resident status;

(B) establishes that he has continuously resided in the United States since the date the alien was granted such temporary resident status;

(C)(i) is admissible to the United States as an immigrant, except as otherwise provided under subsection (c)(2), and

(ii) has not been convicted of any felony or three or more misdemeanors committed in the United States; and

(D) can demonstrate that he either (i) meets the requirement of paragraph (1) of section 312 (relating to minimal understanding of ordinary English), or (ii) is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English.

(4) The Attorney General shall provide for termination of temporary resident status granted an alien under this subsection—

(A) if the alien commits an act that (i) makes the alien inadmissible to the United States as an immigrant, except as otherwise provided under subsection (c)(2), or (ii) is convicted of any felony or three or more misdemeanors committed in the United States, or

(B) at the end of the forty-second month beginning after the date the alien is granted such status, unless the alien has filed an application for adjustment of such status pursuant to paragraph (3) and such application has not been denied.

(c)(1) The Attorney General shall provide that applications for adjustment of status under subsection (a) and subsection (b)(1) may be filed with the Attorney General or with any qualified organization or State or local government which the Attorney General may designate if such organization or government agrees to transmit any such application to him. No qualified organization or such government may make a determination required by this section to be made by the Attorney General.

(2) The provisions of paragraphs (14), (20), (21), (25), and (32), of section 212(a) shall not be applicable in the determination of an alien's admissibility under subsections (a)(3)(A), (b)(1)(C)(i), (b)(3)(C)(i), and (b)(4)(A)(i), and the Attorney General, in making such determination with respect to a particular alien, may waive any other provision of such section other than paragraph (9), (10), (23) (except for so much of such paragraph as related to a single offense of simple possession of thirty grams or less of marihuana), (27), (28), (29), or (33), for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

(3) During the six-month period beginning on the date of the enactment of this section, the Attorney General, in cooperation with qualified organizations and governments designated under paragraph (1) and the Secretary of Labor, shall broadly disseminate information respecting the benefits which aliens may receive under this section and the requirements to obtain such benefits.

(4) The Attorney General shall prescribe a fee of $100 or more to be paid by each alien who files an application for adjustment of status under subsection (a) or subsection (b)(1). The Attorney General

shall deposit payments received under the preceding sentence in a separate account and amounts in such account shall be available, without fiscal year limitation, only to cover administrative expenses incurred in connection with the review of applications filed under this section.

(d)(1) For purposes of subsection (a), an alien shall be considered to have resided continuously in the United States, if, during the period between January 1, 1977, and the date of enactment of the Immigration Reform and Control Act of 1983, such alien—

(A) had not been outside the United States for any one period of time in excess of 30 days;

(B) had not been outside the United States for an aggregate period of time in excess of 180 days; and

(C) meets the requirements of paragraph (4).

(2) For purposes of subsection (b)(1), an alien shall be considered to have resided continuously in the United States, if, during the period between January 1, 1980 (or in the case of an alien described by subparagraph (B)(ii) of such subsection, January 1, 1981), and the date of enactment of the Immigration Reform and Control Act of 1983, such alien—

(A) had not been outside the United States for any one period of time in excess of 30 days;

(B) had not been outside the United States for an aggregate period of time—

(i) in the case of an alien described by subsection (b)(1)(B)(i), in excess of 90 days; or

(ii) in the case of an alien described by subsection (b)(1)(B)(ii), in excess of 60 days; and

(C) meets the requirements of paragraph (4).

(3) For purposes of subsection (b)(3), an alien shall be considered to have resided continuously in the United States, if, during the period between the date of adjustment to temporary resident status and the date of filing an application under paragraph (3) of such subsection, such alien—

(A) had not been outside the United States for any one period of time in excess of 30 days;

(B) had not been outside the United States for any aggregate period of time in excess of 90 days; and

(C) meets the requirements of paragraph (4).

(4)(A) For purposes of subsection (a), (b)(1), or (b)(3), an alien shall not be considered to have resided continuously in the United States, if, during the period of time referred to in paragraph (1), (2), or (3) of this subsection, whichever is applicable, such alien was outside the United States as a result of a departure under an order of deportation.

(B) Any period of time during which an alien is outside the United States pursuant to the advance parole procedures of the Service shall not be considered as part of the period of time during which an alien is outside the United States for purposes of this subsection.

(5)(A) Each individual who applies for adjustment of status under subsection (a), (b)(1), or (b)(3) shall submit with his application such documents as are necessary to establish that such alien has employment in the United States, together with independent corroboration

of the information contained in such documents, except that if the Attorney General determines that such proof of employment is inapplicable, the Attorney General may accept other documents which support the individual's application for adjustment of status, together with independent corroboration of the information contained in such documents.

(B) Any document of Federal, State, or local government submitted pursuant to subparagraph (A) shall be in the form of a certified copy.

(e)(1) During the period an alien is in lawful temporary resident status granted under subsection (b)(1) and during the three-year period beginning on the date an alien is granted lawful permanent resident status under subsection (a) or (b)(3), and notwithstanding any other provision of law—

(A) except as provided in paragraph (2), the alien is not eligible for—

(i) any program of financial assistance furnished under Federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need, as such programs are identified by the Attorney General in consultation with other appropriate heads of the various departments and agencies of Government,

(ii) medical assistance under a State plan approved under title XIX of the Social Security Act, and

(iii) assistance under the Food Stamp Act of 1977, and

(B) a State or political subdivision therein may provide that the alien is not eligible for the programs of financial or medical assistance furnished under the law of that State or political subdivision.

(2)(A) Paragraph (1) shall not apply to an alien described in subsection (b)(1)(B)(ii) (relating to certain Cuban and Haitian entrants).

(B) For the purpose of section 501 of the Refugee Education Assistance Act of 1980 (Public Law 96-122), assistance shall be continued under such section with respect to an alien without regard to the alien's adjustment of status under this section.

(f) The Attorney General, after consultation with the Committees on the Judiciary of the House of Representatives and the Senate and with qualified organizations and governments designated pursuant to subsection (c)(1), shall prescribe regulations as may be necessary to carry out the provisions of this section. Such regulations may be prescribed to take effect on an interim basis if the Attorney General determines that this is necessary in order to implement this section in a timely manner.

(g)(1) No decision or determination made by the Attorney General under this section may be reviewed by any court of the United States or of any State.

(2) No alien denied adjustment of status under this section may raise a claim to such adjustment in any proceeding of the United States or any State involving the status of such alien, including any proceeding of deportation or exclusion under this Act.

(3) No denial of adjustment of status under subsection (a) or subsection (b) based on a late filing of an application for such adjustment may be reviewed by a court of the United States or of any

State or reviewed in any administrative proceeding of the United States Government.

(h) Notwithstanding any other provision of law, the retired or retainer pay of a member or former member of the Armed Forces of the United States or the annuity of a retired employee of the Federal Government shall not be reduced while such individual is temporarily employed by the Service for a period of not to exceed fifteen months to perform duties in connection with the adjustment of status of aliens under this section.

* * * * * * *

CHANGE OF NONIMMIGRANT CLASSIFICATION

SEC. 248. The Attorney General may, under such conditions as he may prescribe, authorize a change from any nonimmigrant classification to any other nonimmigrant classification in the case of any alien lawfully admitted to the United States as a nonimmigrant who is continuing to maintain that status, except in the case of—

(1) an alien classified as a nonimmigrant under subparagraph (C), (D), or (K) of section 101(a)(15),

(2) an alien classified as a nonimmigrant under subparagraph (J) of section 101(a)(15) who came to the United States or acquired such classification in order to receive graduate medical education or training, **[**and**]**

(3) an alien (other than an alien described in paragraph (2)) classified as a nonimmigrant under subparagraph (J) of section 101(a)(15) who is subject to the two-year foreign residence requirement of section 212(e) and has not received a waiver thereof, unless such alien applies to have the alien's classification changed from classification under subparagraph (J) of section 101(a)(15) to a classification under subparagraph (A) or (G) of such section**[**.**]** *, and*

(4) an alien admitted as a nonimmigrant visitor without a visa under section 212(l).

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CHAPTER 8—GENERAL PENALTY PROVISIONS

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UNLAWFUL BRINGING OF ALIENS INTO UNITED STATES

SEC. 273. (a) * * *

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(d) The owner, charterer, agent, consignee, commanding officer, or master of any vessel or aircraft arriving at the United States from any place outside thereof who fails to detain on board or at such other place as may be designated by an immigration officer any alien stowaway until such stowaway has been inspected by an immigration officer, or who fails to detain such stowaway on board or at such other designated place after inspection if ordered to do so by an immigration officer, or who fails to deport such stowaway on the vessel or aircraft on which he arrived or on another vessel or aircraft at the expense of the vessel or aircraft on which he arrived when required to do so by an immigration officer, shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of $1,000 for each alien stowaway, in respect of whom any such failure occurs. Pending final determination of liability for such fine, no such vessel or aircraft shall be granted clearance, except that clearance may be granted upon the deposit of a sum sufficient to cover such fine, or of a bond with sufficient surety to secure the payment thereof approved by the collector of customs. The provisions of section 235 for detention of aliens for examination before [special inquiry officers] *immigration judges* and the right of appeal provided for in section 236 shall not apply to aliens who arrive as stowaways and no such alien shall be permitted to land in the United States, except temporarily for medical treatment, or pursuant to such regulations as the Attorney General may prescribe for the ultimate departure or removal or deportation of such alien from the United States.

BRINGING IN AND HARBORING CERTAIN ALIENS

SEC. 274. (a) Any person including the owner, operator, pilot, master, commanding officer, agent or consignee of any means of transportation who—

(1) brings into or lands in the United States, by any means of transportation or otherwise, or attempts, by himself or through another, to bring into or land in the United States, by any means of transportation or otherwise;

(2) knowing that he is in the United States in violation of law, and knowing or having reasonable grounds to believe that his last entry into the United States occurred less than three years prior thereto, transports, or moves, or attempts to transport or move, within the United States by means of transportation or otherwise, in furtherance of such violation of law;

(3) willfully or knowingly conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, in any place, including any building or any means of transportation; or

(4) willfully or knowingly encourages or induces, or attempts to encourage or induce, either directly or indirectly, the entry into the United States of—

any alien, including an alien crewman, not duly admitted by an immigration officer or not lawfully entitled to enter or reside within the United States under the terms of this Act or any other law relating to the immigration or expulsion of aliens, shall be guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding $2,000 or by imprisonment for a term not exceeding five years, or both, for each alien in respect to whom any violation of this subsection occurs[: *Provided, however*, That for the purposes of this section, employment (including the usual and normal practices incident to employment) shall not be deemed to constitute harboring].

(b)(1) Any conveyance, including any vessel, vehicle, or aircraft, which is used in the commission of a violation of subsection (a) *or subsection (c)* shall be subject to seizure and forfeiture, except that—

(A) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to the illegal act; and

(B) no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any State.

* * * * * * *

(c) Any person who, knowing or in reckless disregard of the fact that an alien has not received prior official authorization to come to, enter, or reside in the United States, brings to or attempts to bring to the United States such alien by himself or through another in any manner whatsoever, regardless of whether or not fraudulent, evasive, or surreptitious means are used and regardless of any official action which may later be taken with respect to such alien, shall, for each transaction constituting a violation of this subsection (regardless of the number of aliens involved)—

(1) be fined an amount equal to $2,500, the imposition of which may not be suspended by the court, plus, in the court's discretion, an additional amount not to exceed $2,500 for each such alien in respect to whom a violation of this subsection occurred, or be imprisioned not to exceed one year, or both, or

(2) in the case of a second or subsequent offense, an offense done for the purpose of commercial advantage or private gain, an offense in which the alien is not upon arrival immediately brought and presented to an appropriate immigration officer, or an offense during which either the offender or the alien with the knowledge of the offender makes any false or misleading statement or engages in any act or conduct intended to mislead any officer, agent, or employee of the United States, be fined $2,500, the imposition of which may not be suspended by the court, plus, in the court's discretion, an additional amount not to exceed $7,500 for each such alien in respect to whom a violation of this subsection occurred, or be imprisoned not to exceed five years, or both.

[(c)**]** *(d)* No officer or person shall have authority to make any arrest for a violation of any provision of this section except officers any employees of the Service designated by the Attorney General, either individually or as a member of a class, and all other officers whose duty it is to enforce criminal laws.

UNLAWFUL EMPLOYMENT OF ALIENS

SEC. 274A. (a)(1) It is unlawful for a person or other entity after the date of the enactment of this section—

(A) to hire, or for consideration to recruit or refer, for employment in the United States an alien knowing the alien is an unauthorized alien (as defined in paragraph (4)) with respect to such employment, or

(B) to hire for employment in the United States an individual without complying with the requirements of subsection (b).

Subparagraph (B) shall not apply to a person or entity which employs three or fewer employees.

(2) It is unlawful for a person or other entity who, after hiring an alien for employment subsequent to the date of the enactment of this Act and in accordance with paragraph (1), continues to employ the alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such employment.

(3) A person or entity that establishes that it has complied in good faith with the requirements of subsection (b) with respect to the hiring, recruiting, or referral for employment of an alien in the United States has established an affirmative defense that the person or entity has not violated paragraph (1)(A) with respect to such hiring, recruiting, or referral.

(4) As used in this section, the term "unauthorized alien" means, with respect to the employment of an alien at a particular time, that the alien is not at that time either (A) an alien lawfully admitted for permanent residence, or (B) authorized to be so employed by this Act or by the Attorney General.

(b) Except as provided in subsection (c), the requirements referred to in paragraphs (1)(B) and (3) of subsection (a) are, in the case of a person or other entity hiring, recruiting, or referring an individual for employment in the United States, that—

(1) the person or entity must attest, under penalty of perjury and on a form established by the Attorney General by regulation, that he has verified that the individual is eligible to be employed (or recruited or referred for employment) in accordance with subsection (a)(1)(A) by examining the individual's—

(A) United States passport, or

(B)(i) social security account number card (issued by the Social Security Administration under section 205(c)(2)(B) of the Social Security Act and in such secure form, if any, as the Administrator of Social Security has made available) or certificate of birth in the United States or United States consular report of birth or, in the case of an individual without a social security card or a certificate of birth in the United States or a United States consular report of birth, a passport of a foreign country or registration for classification as a refugee or, in the case of an applicant for asylum who does not have documentation referred to in this subclause, any other identification acceptable to the Attorney General, and

(ii)(I) alien documentation, identification, and telecommunication card, or similar fraud-resistant card issued by the Attorney General to aliens, or other identification issued by the Attorney General to aliens who establish eligibility for employment,

(II) driver's license or similar document issued for the purpose of identification by a State, if it contains a photograph of the individual or such other personal identifying information relating to the individual as the Attorney General finds sufficient for purposes of this section, or

(III) in the case of individuals under sixteen years of age or in a State which does not provide for issuance of an identification document (other than a driver's license) referred to in subclause (II), documentation of personal identity of such other type as the Attorney General finds, by regulation, provides a reliable means of identification;

(2) the individual must attest, under penalty of perjury and on the form established by the Attorney General for puposes of paragraph (1), that the individual is a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized under this Act or by the Attorney General to be hired, recruited, or referred for such employment; and

(3) after completion of such form in accordance with paragraphs (1) and (2), the person or entity must retain the form and make it available for inspeciton by officers of the Service or of the Department of Labor during a period beginning on the date of the hiring, recruiting, or referral of the individual and ending on the later of five years after such date or, in the case of the hiring of the individual, one year after the date the individual's employment is terminated.

A person or entity has complied with paragraph (1) with respect to examination of a document if the document reasonably appears on its face to be genuine. Notwithstanding any other provision of law, the person or entity may copy a document presented by an individual pursuant to this subsection and may retain the copy, but only (except as otherwise permitted under law) for the purpose of complying with the requirements of this subsection.

(c)(1) Within three years after the date of the enactment of this section, the President shall implement such changes in or additions to the requirements of subsection (b) as may be necessary to establish a secure system to determine employment eligibility in the United States, which system shall conform to the requirements of paragraph (2).

(2) Such system shall be designed in a manner so that—

(A) the system will reliably determine that a person with the identity claimed by an employee or prospective employee is eligible to work, and that the employee or prospective employee is not claiming the identity of another individual;

(B) if the system requires an examination by an employer of any document, such document must be in a form which is resistant to counterfeiting and tampering;

(C) personal information utilized by the system is available to Government agencies, employers, and other persons only to the extent necessary for the purpose of verifying that the individual is not an unauthorized alien;

(D) the system will protect the privacy and security of personal information and identifiers utilized in the system including recommendations to the Congress for the establishment of civil and criminal sanctions for unauthorized use or disclosure of the information or identifiers contained in such system;

(E) a verification that an employee or prospective employee is eligible to be employed in the United States may not be with-

held for any reason other than that the employee or prospective employee is an unauthorized alien;

(F) the system shall not be used for law enforcement purposes (other than for enforcement of this section or section 1546 of title 18, United States Code);

(G) if the system requires individuals to present a card or other document (designed specifically for use for this purpose) at the time of hiring, recruitment, or referral, then such document may not be required to be presented for any purpose other than under this section (or enforcement of section 1546 of title 18, United States Code) nor to be carried on one's person; and

(H) the President shall examine existing Federal and State identification systems, or the systems referred to in subsection (b) of this section, to determine suitability for use with the permanent system authorized to be developed by this section.

(d)(1)(A) In the case of a person or entity which violates paragraph (1)(A) or (2) of subsection (a) and which—

(i) has not previously been determined (after opportunity for a hearing under paragraph (4)(A)) to have violated either such paragraph, the person or entity shall be subject to a civil penalty of $1,000 for each unauthorized alien with respect to which the violation occurred, or

(ii) has previously been determined (after opportunity for a hearing under paragraph (4)(A)) to have violated either such paragraph, the person or entity shall be subject to a civil penalty of $2,000 for each unauthorized alien with respect to which the violation occurred.

In counting the number of previous determinations of violations for purposes of determining whether clause (i) or (ii) applies, determinations of more than one violation in the course of a single proceeding or adjudication shall be considered as a single determination. In the case of a person or entity composed of distinct, physically separate subdivisions each of whcih provides separately for its own hiring, recruiting, or referral for employment, each such subdivision shall be considered a separate person or entity if such hiring, recruiting, or referral for employment is not under the direct control of another subdivision or any entity or office exercising final management authority over such subdivisions.

(B) In the case of a person or entity which has engaged in a pattern or practice of employment, recruitment, or referral in violation of paragraph (1)(A) or (2) of subsection (a), the person or entity shall be fined not more than $1,000, imprisoned not more than six months, or both, for each violation.

(2) Whenever the Attorney General has reasonable cause to believe that a person or entity is engaged in a patterm or practice of employment, recruitment, or referral in violation of paragraph (1)(A) or (2) of subsection (a), the Attorney General may bring a civil action in the appropriate district court of the United States requesting such relief, including a permanent or temporary injunction, restraining order, or other order against the person or entity, as the Attorney General deems necessary.

(3) A person or entity which violates subsection (a)(1)(B) shall be subject to a civil penalty of $500 for each individual with respect to which such violation occurred.

(4)(A) Before assessing a civil penalty under this subsection against a person or entity, the Attorney General shall provide the person or entity with notice and the opportunity to request a hearing respecting the violation. Any hearing so requested shall be conducted before an immigration officer designated by the Attorney General.

(B) If the person or entity against whom a civil penalty is assessed fails to pay the penalty within the time prescribed in such order, the Attorney General shall file a suit to collect the amount in any appropriate district court of the United States. In any such suit or in any other suit seeking to review the Attorney General's determination, the suit shall be determined solely upon the administrative record upon which the civil penalty was assessed and the Attorney General's findings of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

(e) In providing documentation or endorsement of authorization of aliens (other than aliens lawfully admitted for permanent residence) to be employed in the United States, the Attorney General shall provide that any limitations with respect to the period or type of employment or employer shall be conspicuously stated on the documentation or endorsement.

(f) The provisions of this section preempt any State or local law imposing civil or criminal sanctions upon those who employ, or refer or recruit for employment, unauthorized aliens.

(g) The President shall monitor the implementation of this section (including the effectiveness of the verification system described in subsection (b) and the status of the development and implementation of the secure verification system described in subsection (c)) and the impact of this section on employment in the United States of aliens and of citizens and nationals of the United States, on the illegal entry of aliens into the United States, and on the failure of aliens who have legally entered the United States to remain in legal status.

ENTRY OF ALIEN AT IMPROPER TIME OR PLACE; MISREPRESENTATION AND CONCEALMENT OF FACTS

SEC. 275. Alien who (1) enters *or attempts to enter* the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, or (3) obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall, for the first commission of any such offenses, be guilty of a misdemeanor and upon conviction thereof be punished by imprisonment for not more than six months, or by a fine of not more than $500, or by both, and for a subsequent commission of any such offenses shall be guilty of a felony and upon conviction thereof shall be punished by imprisonment for not more than two years, or by a fine of not more than $1,000, or both.

* * * * * * *

JURISDICTION OF DISTRICT COURTS

SEC. 279. (*a*) [The] *Except as otherwise provided under section 106, the* district courts of the United States shall have jurisdiction of all causes, civil and criminal, arising under any of the provisions of this title. It shall be the duty of the United States attorney of the proper district to prosecute every such suit when brought by the United States. Notwithstanding any other law, such prosecutions or suits may be instituted at any place in the United States at which the violation may occur or at which the person charged with a violation under section 275 or 276 may be apprehended. No suit or proceeding for a violation of any of the provisions of this title shall be settled, compromised, or discontinued without the consent of the court in which it is pending and any such settlement, compromise, or discontinuance shall be entered of record with the reason therefor.

(b) An action for judicial review of any administrative action arising under this Act, or regulations issued pursuant to this Act, other than a final order of deportation as provided in section 106(a) of this Act, may not be filed later than thirty days after the day of the final administrative action or from the effective date of this section, whichever is later.

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CHAPTER 9—MISCELLANEOUS

NONIMMIGRANT VISA FEES AND BORDER FACILITY FEES

SEC. 281. (*a*) The fees for the furnishing and verification of applications for visas by nonimmigrants of each foreign country and for the issuance of visas to nonimmigrants of each foreign country shall be prescribed by the Secretary of State, if practicable, in amounts corresponding to the total of all visa, entry, residence, or other similar fees, taxes, or charges assessed or levied against nationals of the United States by the foreign countries of which such nonimmigrants are nationals or stateless residents: *Provided,* That nonimmigrant visas issued to aliens coming to the United States in transit to and from the headquarters district of the United Nations in accordance with the provisions of the Headquarters Agreement shall be gratis.

(b) The Attorney General, after consultation with the Secretary of State, shall impose fees for an alien's use of boarder facilities or services of the Service in an amount necessary to make the total of such fees substantially equal to the cost of maintaining and operating such facilities and services.

* * * * * * *

BURDEN OF PROOF

SEC. 291. Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document, or is not subject to exclusion under any provision of this Act, and if an alien, that he is entitled to the nonimmigrant, immigrant, special immigrant, immediate relative, or refugee status claimed, as the case may be. If such person fails to establish to the satisfaction of the consular officer that he is eligible to receive a visa or other document required for entry, no visa or other document required for entry shall be issued to such person, nor shall such person be admitted to the United States unless he establishes to the satisfaction of the Attorney General that he is not subject to exclusion under any provision of this Act. In any deportation proceeding under chapter 5 against any person, the burden of proof shall be upon such person *to identify himself correctly by name and nationality and* to show the time, place, and manner of his entry into the United States, but in presenting such proof he shall be entitled to the production of his visa or other entry document, if any, and of any other documents and records, not considered by the Attorney General to be confidential, pertaining to such entry in the custody of the Service. If such burden of proof is not sustained, such person shall be presumed to be in the United States in violation of law.

RIGHT TO COUNSEL

SEC. 292. [In any exclusion or deportation proceeding before a special inquiry officer and in any appeal proceeding before the Attorney General from any such exclusion or deportation proceedings,] *In any proceeding or hearing before an immigration law judge and in any appeal before the United States immigration Board or the Attorney General from any such proceeding,* the person concerned shall have the privilege of being represented (at no expense to the Government *and at no unreasonable delay*) by such counsel, authorized to practice in such proceedings, as he shall choose.

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TITLE III—NATIONALITY AND NATURALIZATION

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CHAPTER 4—MISCELLANEOUS

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PROCEEDINGS FOR DECLARATION OF UNITED STATES NATIONALITY IN THE EVENT OF DENIAL OF RIGHTS AND PRIVILEGES AS NATIONAL

SEC. 360. [8 U.S.C. 1503] (a) If any person who is within the United States claims a right or privilege as a national of the United States and is denied such right or privilege by any department or independent agency, or official thereof, upon the ground that he is not a national of the United States, such person may institute an action under the provisions of section 2201 of title 28, United States Code, against the head of such department or independent agency for a judgment declaring him to be a national of the United States, except that no such action may be instituted in any case if the issue of such person's status as a national of the

United States (1) arose by reason of or in connection with any exclusion proceeding under the provisions of this or any other act, or (2) is in issue in any such exclusion proceeding. An action under this subsection may be instituted only within five years after the final administrative denial of such right or privilege and shall be filed in the district court of the United States for the district in which such person resides or claims a residence, and jurisdiction over such officials in such cases is hereby conferred upon those courts.

(b) If any person who is not within the United States claims a right or privilege as a national of the United States and is denied such right or privilege by any department or independent agency, or official thereof, upon the ground that he is not a national of the United States, such person may make application to a diplomatic or consular officer of the United States in the foreign country in which he is residing for a certificate of identity for the purpose of traveling to a port of entry in the United States and applying for admission. Upon proof to the satisfaction of such diplomatic or consular officer that such application is made in good faith and has a substantial basis, he shall issue to such person a certificate of identity. From any denial of an application for such certificate the applicant shall be entitled to an appeal to the Secretary of State, who, if he approves the denial, shall state in writing his reasons for his decision. The Secretary of State shall prescribe rules and regulations for the issuance of certificates of identity as above provided. The provisions of this subsection shall be applicable only to a person who at some time prior to his application for the certificate of identity has been physically present in the United States, or to a person under sixteen years of age who was born abroad of a United States citizen parent.

(c) A person who has been issued a certificate of identity under the provisions of subsection (b), and while in possession thereof, may apply for admission to the United States at any port of entry, and shall be subject to all the provisions of this Act relating to the conduct of proceedings *(and appeals thereof)* involving aliens seeking admission to the United States. [A final determination by the Attorney General that any such person is not entitled to admission to the United States shall be subject to review by any court of competent jurisdiction in habeas corpus proceedings and not otherwise.] Any person described in this section who is finally excluded from admission to the United States shall be subject to all the provisions of this Act relating to aliens seeking admission to the United States.

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TITLE IV—MISCELLANEOUS AND REFUGEE ASSISTANCE

CHAPTER 1—MISCELLANEOUS

[JOINT CONGRESSIONAL COMMITTEE]

[SEC. 401. Repealed.]

AMENDMENTS TO OTHER LAWS

SEC. 402. [omitted as executed.]

LAWS REPEALED

SEC. 403. [omitted as executed.]

AUTHORIZATION OF APPROPRIATIONS

SEC. 404. (*a*) There are authorized to be appropriated [such sums as may be necessary to carry out the provisions of this Act other than] *for the fiscal year 1984, $200,000,000 to carry out the provisions of this Act other than section 214(c)(5) of* chapter 2 of title IV.

(b) There are authorized to be appropriated, in addition to such sums as may be available for such purposes, such sums as may be necessary to the Department of Labor for enforcement activities of the Wage and Hour Division and the Office of Federal Contract Compliance Programs within the Employment Standards Administration of the Department and to the Equal Employment Opportunity Commission for its enforcement activities in connection with the enforcement of section 274A of the Immigration and Nationality Act.

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MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT

(Public Law 97-470)

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TABLE OF CONTENTS

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TITLE I—FARM LABOR CONTRACTORS

* * * * * * *

[Sec. 106. Prohibition against employing illegal aliens.]

* * * * * * *

DEFINITIONS

SEC. 3. As used in this Act—

(1) * * *

* * * * * * *

(8)(A) Except as provided in subparagraph (B), the term "migrant agricultural worker" means an individual who is employed in agricultural employment of a seasonal or other temporary nature, and who is required to be absent overnight from his permanent place of residence.

(B) The term "migrant agricultural worker" does not include—

(i) any immediate family member of an agricultural employer or a farm labor contractor; or

(ii) any temporary nonimmigrant alien who is authorized to work in agricultural employment in the United

States under sections 101(a)(15)(H)(ii)*(a)* and 214(c) of the Immigration and Nationality Act.

(9) The term "person" means any individual, partnership, association, joint stock company, trust, cooperative, or corporation.

(10)(A) Except as provided in subparagraph (B), the term "seasonal agricultural worker" means an individual who is employed in agricultural employment of a seasonal or other temporary nature and is not required to be absent overnight from his permanent place of residence—

(i) when employed on a farm or ranch performing field work related to planting, cultivating, or harvesting operations; or

(ii) when employed in canning, packing, ginning, seed conditioning or related research, or processing operations, and transported, or caused to be transported, to or from the place of employment by means of a day-haul operation.

(B) The term "seasonal agricultural worker" does not include—

(i) any migrant agricultural worker;

(ii) any immediate family member of an agricultural employer or a farm labor contractor; or

(iii) any temporary nonimmigrant alien who is authorized to work in agricultural employment in the United States under sections 101(a)(15)(H)(ii)*(a)* and 214(c) of the Immigration and Nationality Act.

(11) The term "Secretary" means the Secretary of Labor or the Secretary's authorized representative.

(12) The term "State" means any of the States of the United States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, and Guam.

* * * * * * *

REGISTRATION DETERMINATIONS

SEC. 103. (a) In accordance with regulations, the Secretary may refuse to issue or renew, or may suspend or revoke, a certificate of registration (including a certificate of registration as an employee of a farm labor contractor) if the applicant or holder—

(1) has knowingly made any misrepresentation in the application for such certificate;

(2) is not the real party in interest in the application or certificate of registration and the real party in interest is a person who has been refused issuance or renewal of a certificate, has had a certificate suspended or revoked, or does not qualify under this section for a certificate;

(3) has failed to comply with this Act or any regulation under this Act;

(4) has failed—

(A) to pay any court judgment obtained by the Secretary or any other person under this act or any regulation under this Act or under the Farm Labor Contractor Registration Act of 1963 or any regulation under such Act, or

(B) to comply with any final order issued by the Secretary as a result of a violation of this Act or any regulation under this Act or a violation of the Farm Labor Contractor Registration Act of 1963 or any regulation under such Act; [or]

(5) has been convicted within the preceding five years—

(A) of any crime under State or Federal law relating to gambling, or to the sale, distribution or possession of alcoholic beverages, in connection with or incident to any farm labor contracting activities; or

(B) of any felony under State or Federal law involving robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, prostitution, peonage, or smuggling or harboring individuals who have entered the United States illegally[.] *; or*

(6) has been found to have violated paragraph (1) or (2) of section 274A(a) of the Immigration and Nationality Act.

* * * * * * *

[PROHIBITION AGAINST EMPLOYING ILLEGAL ALIENS

[SEC. 106. (a) No farm labor contractor shall recruit, hire, employ, or use, with knowledge, the services of any individual who is an alien not lawfully admitted for permanent residence or who has not been authorized by the Attorney General to accept employment.

[(b) A farm labor contractor shall be considered to have complied with the farm labor contractor relied in good faith on documentation prescribed by the Secretary, and the farm labor contractor had no reason to believe the individual was an alien referred to in subsection (a).]

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TITLE V—GENERAL PROVISIONS

PART A—ENFORCEMENT PROVISIONS

CRIMINAL SANCTIONS

SEC. 501. (a) Any person who willfully and knowingly violates this Act or any regulation under this Act shall be fined not more than $1,000 or sentenced to prison for a term not to exceed one year, or both. Upon conviction for any subsequent violation of this Act or any regulation under this Act, the defendant shall be fined not more than $10,000 or sentenced to prison for a term not to exceed three years, or both.

(b) If a farm labor contractor who commits a violation of [section 106] *paragraph (1) or (2) of section 274A(a) of the Immigration and Nationality Act* has been refused issuance or renewal of, or has failed to obtain, a certificate of registration or is a farm labor contractor whose certificate has been suspended or revoked, the contractor shall, upon conviction, be fined not more than $10,000 or sentenced to prison for a term not to exceed three years, or both.

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TITLE 18, UNITED STATES CODE

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CHAPTER 75—PASSPORTS AND VISAS

1541. Issuance without authority.
1542. False statement in application and use of passport.
1543. Forgery or false use of passport.
1544. Misuse of passport.
1545. Safe conduct violation.
1546. Fraud and misuse of visas, permits, and other [entry] documents.

* * * * * * *

§ 1546. Fraud and misuse of visas, permits, and other [entry] documents

(*a*) Whoever knowingly forges, counterfeits, alters, or falsely makes any immigrant or nonimmigrant visa, permit, [or other document required for entry into the United States] *border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States,* or utters, uses, attempts to use, possesses, obtains, accepts, or receives any such visa, permit, [or document] *border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States,* knowing it to be forged, counterfeit, altered, or falsely made, or to have been procured by means of any false claim or statement, or to have been otherwise procured by fraud or unlawfully obtained; or

Whoever, except under direction of the Attorney General or the Commissioner of the Immigration and Naturalization Service, or other proper officer, knowingly possesses any blank permit, or engraves, sells, brings into the United States, or has in his control or possession any plate in the likeness of a plate designed for the printing of permits, or makes any print, photographs, or impression in the likeness of any immigrant or nonimmigrant visa, permit or other document required for entry into the United States, or has in his possession a distinctive paper which has been adopted by the Attorney General or the Commissioner of the Immigration and Naturalization Service for the printing of such visas, permits, or documents; or

Whoever, when applying for an immigrant or nonimmigrant visa, permit, or other document required for entry into the United States, or for admission to the United States personates another, or falsely appears in the name of a deceased individual, or evades or attempts to evade the immigration laws by appearing under an assumed or fictitious name without disclosing his true identity, or sells or otherwise disposes of, or offers to sell or otherwise dispose of, or utters, such visa, permit, or other document, to any person not authorized by law to receive such document; or

Whoever knowingly makes under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document containing any such false statement—

Shall be fined not more than [$2,000] *$5,000* or imprisoned not more than five years, or both.

(b) Whoever without authority of the issuing agency and with unlawful intent—

(1) photographs, prints, or in any manner makes or executes any engraving, photograph, print, or impression in the likeness of—

(A) any document presented to satisfy a requirement of the Immigration and Nationality Act or regulations issued thereunder, or

(B) any document presented to obtain a required document described in subparagraph (A), including any document presented to establish eligibility for adjustment of status under subsection (a) or (b) of section 245A of the Immigration and Nationality Act;

(2) sells, transfers, distributes, presents, or uses, or possesses with the intent to sell, transfer, distribute, present, or use, an engraving, photograph, print, or impression in the likeness of a document described in subparagraph (A) of (B) of paragraph (1);

(3) alters any document described in subparagraph (A) of (B) of paragraph (1) relating to another person; or

(4) sells, transfers, distributes, presents, or uses, or possesses with the intent to sell, transfer, distribute, present, or use, any document described in subparagraph (A) of (B) of paragraph (1) relating to another person, whether or not altered,

shall be fined not to exceed $5,000 or imprisoned not more than five years, or both.

* * * * * * *

PUBLIC LAW 89-732

[AN ACT To adjust the status of Cuban refugees to that of lawful permanent residents of the United States, and for other purposes.

[*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That, notwithstanding the provisions of section 245(c) of the Immigration and Nationality Act, the status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959 and has been physically present in the United States for at least two years, may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if the alien makes an application for such adjustment, and the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence. Upon approval of such an application for adjustment of status, the Attorney General shall create a record of the alien's admission for permanent residence as of a date thirty months prior to the filing of such an application or the date of his last arrival into the United States, whichever date is later. The provisions of this Act shall be applicable to the spouse and child of any alien described in this subsection, regardless of their citizenship and place of birth, who are residing with such alien in the United States.

[Sec. 2. In the case of any alien described in section 1 of this Act who, prior to the effective date thereof, has been lawfully admitted into the United States for permanent residence, the Attorney General shall, upon application, record his admission for permanent residence as of the date the alien originally arrived in the United States as a nonimmigrant or as a parolee, or a date thirty months prior to the date of enactment of this Act, whichever date is later.

[Sec. 3. Section 13 of the Act entitled "An Act to amend the Immigration and Nationality Act, and for other purposes", approved October 3, 1965 (Public Law 89-236), is amended by adding at the end thereof the following new subsection:

["(c) Nothing contained in subsection (b) of this section shall be construed to affect the validity of any application for adjustment under section 245 filed with the Attorney General prior to December 1, 1965, which would have been valid on that date; but as to all such applications the statutes or parts of statutes repealed or amended by this Act are, unless otherwise specifically provided therein, continued in force and effect."

[Sec. 4. Except as otherwise specifically provided in this Act, the definitions contained in sections 101(a) and (b) of the Immigration and Nationality Act shall apply in the administration of this Act. Nothing contained in this Act shall be held to repeal, amend, alter, modify, affect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of the Immigration and Nationality Act or any other law relating to immigration, nationality, or naturalization.]

ADDITIONAL VIEWS OF SENATOR CHARLES E. GRASSLEY

Approximately thirty years have passed since the last major reform of United States immigration policy. The time has arrived to undergo this painful process again.

Theodore H. White described the situation in which America finds itself resulting from our current set of chaotic complicated immigration laws:

> One starts with the obvious: That the United States has lost one of the cardinal attributes of sovereignty—it no longer controls its own borders. Its immigration laws are flouted by aliens and citizens alike, as no system of laws has been flouted since prohibition. And the impending transformation of our nation, its culture, and its ethic heritage could become one of the central debates of the politics of the 1980s. see White, America in Search of Itself, p. 361 (1982).

The debate has already begun and let us hope that S. 529 is just the first step in the reformation process.

Though most Americans currently residing in the United States owe their presence here to the open door immigration policies of the past, the perpetuation of the myth that this country is one without limits can only prove harmful in the long run. Technology is one of the major reasons why today's immigration phenomenon is entirely different from the immigration waves of the past. As Mr. White continued to explain:

> . . . The earlier immigrants from Europe spent weeks trekking to ports, and then more weeks in the steerage of tramp steamers, to reach the promised land. A modern immigrant can be here in three or four hours from any airport in the Caribbean, in fifteen hours from Asia.
>
> . . . It once took years of work and savings for an honest man to buy passage for his family to join him. Now after six months a diligent immigrant can afford air passage for all the rest of his family. The result has been a stampede, almost an invasion. supra., pp. 361–362.

America currently accepts over twice as many legal immigrants as the rest of the world combined. This does not include the estimated three to six million aliens illegally in the country. Control of our borders is essential in order to protect U.S. citizens from a continued high unemployment rate and to foster a reliance on our laws by those outside our country who wish to reside here.

The Immigration Reform and Control Act is a well-conceived product which may go far in achieving our badly needed reforms. The provisions of the bill relating to employer sanctions, increased interior and border enforcement and a secure worker eligibility identity system are necessary to regain control over our borders.

Though the concept of legalization has been one of the most hotly debated aspects of the bill, I believe that legalizaton in some form is not only in the best interests of those undocumented aliens already firmly residing here but for the citizenry of our country as well. A large undocumented population contributes to the creation and perpetuation of an exploited subclass society afraid to report crimes and illnesses which endanger the public health.

A variety of legalization programs were presented to the Select Commission on Immigration and Refugee Policy, a bipartisan group established by the Carter Administration to study solutions to our immigration problems, and the Senate Subcommittee on Immigration and Refugee Policy ranging from a massive deportation program to total amnesty for all aliens upon enactment of the bill. The Select Commission's final report stated that it was guided by two major principles in developing its legalization recommendations:

> 1. The legalization program should be consistent with U.S. interests and
>
> 2. The program should not encourage further undocumented migration.

The approach adopted in S. 529, as a result of a compromise worked out by Senator Simpson and myself, is consistent with these goals. This provision provides that all illegal aliens who have resided continuously in the U.S. up to January 1, 1977 are eligible for permanent residence status upon enactment of the bill. Illegal aliens who have resided continuously in the U.S. between January 1, 1977 and January 1, 1980 are eligible to apply for temporary resident status with access to permanent residency three years following enactment. In addition, temporary residents are ineligible for all federal assistance programs such as AFDC, food stamps, Medicaid and the like. Permanent residents are ineligible for federal programs for the first three years of their permanent residence.

Though my original goal was to have no legalization prior to the assurance of the development of a secure worker authorization system, I find the present bill language is acceptable. Under S. 529, the Attorney General is required to develop a counterfeit-proof identifier within three years after enactment of the bill. Temporary residents are required to remain in that status for three years. Therefore, we do not actually realize full-blown legalization until the identification system is in place.

The advantages of this proposal are apparent. Massive deportations are not only impractical but nearly impossible. The best chance of apprehending an illegal alien is at the border. The odds plunge drastically downward once that alien has reached the interior of the country. A massive deportation policy was implemented back in 1954 with alarming results. Not only was it unsuccessful in returning many illegal aliens, but the civil rights of many U.S. citizens and permanent residents were violated in the course of this program.

The only realistic remedy to deal with the current population of undocumented workers is to legitimize their status in a way which will ensure that these people continue to work and become productive and participating members of their communities. I believe legalization as embodied in S. 529 accomplishes these goals.

I did have a major concern with last year's bill in the area of the lack of cooperation between INS and state and local law enforcement agencies. I first became aware of this problem in my visit to the border area around El Paso last January. The tremendous burden placed on the Border Patrol is only obvious once one sees it firsthand. To prevent law enforcement agencies from working together in this area is an unnecessary waste of resources.

To alleviate this situation, I offered an amendment which was adopted in subcommittee but subsequently deleted in full committee which formalized cooperative agreements among these agencies.

My intention when I offered this amendment was to clarify a confused situation in which state and local law enforcement agencies were unsure as to their liability if they cooperated with Federal immigration officers. Legal authorities in several states indicated that the situation was so unclear as to preclude any cooperation, not for fear of doing wrong, but because they did not know where the limits to their actions, if any, would lie. I sought to ameliorate this chilling effect.

This situation largely developed due to a directive issued in 1978 by then-Attorney General Griffin Bell. The Bell directive established the policy of the Carter Administration that Federal-State cooperation in this area was not to be encouraged, and should not be viewed as desirable by that Justice Department leadership. In my conversations with Attorney General William French Smith and his staff at the Department of Justice during deliberations on the bill, I found a much more positive impression of cooperation between state and local and federal authorities. At that time, I was assured that Commissioner Nelson and Attorney General Smith would immediately begin a review of the Bell directive in order to correct the misimpression it had created that cooperation of any kind between federal, state, and local law enforcement authorities in the area of immigration was inappropriate and unlawful.

These assurances made my amendment unnecessary and I am pleased to report that the Department of Justice has fulfilled their promise and issued a new directive on February 10, 1983, to encourage the cooperation I envisioned. I congratulate Attorney General Smith and Commissioner Nelson for taking this very important step which will greatly assist our immigration control efforts.

This bill is a carefully crafted package which must remain largely intact in order to pass both bodies and go to the President's desk for signature. It is my hope that we can move S. 529 rapidly through the Senate, that in turn the House will act quickly, and the President will approve this bill by the end of the year. If we do not act now, it may be another thirty years before we return to the issue of immigration control.

MINORITY VIEWS OF SENATOR EAST

I cannot support this bill's mass amnesty for untold millions of illegal aliens. I am convinced that amnesty will hurt our workers and taxpayers, undercut enforcement of our laws, and contribute to future illegal immigration. Congress should not reward foreigners who have intentionally violated the criminal law of this nation.

The legalization provisions of the bill would give legal permanent resident status to illegal aliens who have continuously resided here since January 1, 1977, and legal temporary resident status to those here since January 1, 1980. Both groups of legalized aliens will be free to take any job they can obtain. These legalized aliens will be free to use our schools to acquire skills to better compete with American workers for good jobs. This bill provides for no government approval of employment of these aliens nor certification that their employment would not displace or adversely affect wages and working conditions of Americans. After 5 years as permanent residents they could apply for United States citizenship.

No matter how much sympathy we feel for the impoverished billions of the world's underdeveloped nations, our first duty as elected representatives is to protect American citizens and the future of our Nation. With millions of Americans unemployed we have no right to give jobs to foreign nationals who are illegally present in our country.

The general public recognizes that amnesty will be granted at the expense of American workers. Paul S. Egan, representing the American Legion, testifying before the Immigration and Refugee Policy Subcommittee on October 29, 1982, said:

> To say to Americans . . . that those illegally in the country and holding jobs desired by Americans will be allowed to retain them while American workers must fend for themselves is patently unfair.

Prof. C. Barry McCarty, in testimony submitted to the subcommittee on behalf of Conservatives for Immigration Reform, stated that, because of the amnesty provision, the bill ". . . seems more concerned with protecting the alien labor supply of American employers and the employment opportunities of amnestied aliens than with opening jobs for U.S. workers."

The testimony presented to the subcommittee establishes that many illegal aliens are holding good jobs that Americans would gladly accept, and that illegal immigration contributes to our high unemployment rate and depresses wages and working conditions of many American workers. Experts such as a former INS Commissioner Leonard Chapman and former Labor Secretary Ray Marshall, despite their differences of political philosophy, agree that removing illegal aliens from the work force could open jobs for millions of unemployed Americans.

With the Federal Government in debt in excess of $1 trillion, we cannot afford to support millions of our citizens on public assistance and unemployment programs while millions of jobs are filled by illegal aliens. The Congressional Budget Office has estimated that each unemployed American costs the Federal Treasury an average of about $7,000 per year in unemployment and welfare benefits and other costs. Thus, for every million Americans displaced by illegal aliens, the Federal Treasury loses $7 billion per year.

Amnesty would also impose a substantial new welfare burden on American taxpayers, although the proponents of the measure delay much of this added expense a few years by denying federally funded public assistance to legalized aliens for three years after permanent resident status is granted. Delaying the day of fiscal reckoning may make amnesty more acceptable to some, but the bills will eventually come due. The Office of Management and Budget last year estimated that the added cost of providing welfare benefits to amnestied aliens could exceed two billion dollars annually by 1990. The INS could hire several thousand more American citizens to protect our borders and apprehend illegal aliens for a tiny fraction of the increased welfare costs of amnesty.

In addition to the burdens of unemployment and added welfare expenditures which amnesty would impose on Americans, I fear that it will encourage illegal immigration in the future. This dangerous precedent will tempt foreigners to enter illegally in the hope of benefiting from future legalizations. Foreigners facing long immigrant visa backlogs, and seeing lawbreakers rewarded with amnesty, may decide to enter illegally. It is reasonable to predict that the same groups lobbying for mass amnesty today (and against any realisitic enforcement of our immigration laws) will join the millions of aliens this bill would legalize in calls for a second amnesty a few years from now.

I predict that many amnestied illegal aliens will bring relatives in illegally once they have a secure immigration status and opportunities to obtain better jobs. Many illegal aliens are here simply to work for a few years and do not desire to become part of our society. Amnesty would make permanent settlement so attractive that many illegal aliens would decide to stay and send for parents, spouses, children, brothers and sisters, grandparents and the entire extended family of Third World cultures.

Amnesty discriminates against foreigners who obey our immigrations laws and wait patiently abroad for immigrant visas. The visa backlog is now in the hundreds of thousands and waiting periods of seven or eight years are common. Amnesty will not only be unfair to these law-abiding foreigners, it may delay their lawful immigration for years. Those amnestied aliens who receive permanent resident status (including the temporary residents who adjust status after two years) receive the right to bring in family members within the preference system, thus further delaying other prospective immigrants.

The negative impact on other future immigrants will be even more dramatic five years after the first awards of permanent resident status to illegal aliens. As hundreds of thousands of amnestied aliens become American citizens in 1989 and subsequent years, they will begin to bring in immediate relatives subject to no numerical limitation. Under the terms of the bill the number of visas available for numerically limited family reunification immigrants would be determined by subtracting the number of immediate relatives admitted in the prior year from 350,000. While this is a needed reform to control increasing admissions, other prospective immigrants will be unfairly penalized if the bill's mass amnesty is adopted. When immediate relatives of naturalized previously legalized aliens are added to the normal flow of immediate relatives of U.S. citizens (currently running in excess of 150,000 annually and growing steadily), it becomes quite possible that there could be no family reunification visas available for several years in the 1990's. It is reasonable to predict that many frustrated visa seekers will enter illegally to join their relatives.

No one knows how many illegals are here or how many will apply for amnesty. Some experts, including former INS officers, have estimated that there may be over twelve million illegal aliens present in our nation. The Los Angeles County Board of Supervisors estimated on April 15, 1982, that there were 1.1 million illegal aliens in that one county. I can only caution that, if the numbers should prove to be in the upper ranges of the estimates, law-abiding prospective immigrants will be crowded out of the visa lines by the relatives of former illegal aliens.

The tremendous administrative burden imposed upon the INS by the amnesty program will make it even harder for the INS to combat illegal immigration. Realistic observers assume that many illegal aliens entering after the January 1, 1980 cutoff date or even arriving in the next few months will obtain amnesty using fraudulent rent receipts, false affidavits from friends, and other illicit documents. We must remember that illegal aliens live in a world where the use of fraudulent documents is common. Reports of sales of "amnesty kits" should come as no surprise. Whether the understaffed and beleaguered INS could properly screen millions of applicants for amnesty and perform its other duties is open to question.

I am not persuaded by the reasons given by my colleagues to justify amnesty. The assertion that it is impossible to find and repatriate such a large number of aliens is true only if Congress continues to deny adequate funding to the INS. Modest user fees charged foreigners at our borders, ports and airports could easily raise enough revenue to triple the law enforcement resources of the INS. The presence of millions of illegal aliens is not due to waste or misguided INS priorities; it is a result of the inadequate support Congress has given the INS. I believe we should at least try to enforce our immigration laws, using employer sanctions and increased manpower, before we grant any amnesty.

Another stated goal of amnesty is to protect the labor pool of employers who now hire illegal aliens. I am not umindful of the widespread opinion in sectors of the business community that there are not enough Americans willing to take low-paying jobs. However, amnesty will not solve such labor shortgages. Illegal aliens presently in the lowest-paying jobs will be free to obtain better jobs and educations. Our distinguished former colleague Senator Hayakawa noted last year that "Once legalized, rural workers will migrate to cities where year-round employment is available."

The answer to American agriculture's need for temporary seasonal labor is contained, not in amnesty, but in a limited foreign worker program such as the streamlined H-2 program contained in the bill. Shortages of year-round unskilled labor could be addressed by reforming our bloated welfare state to require able-bodied citizens to work at any job available. Furthermore, because the employer sanctions apply only to persons hired in the future, there should be no sudden disruption of existing work forces.

The proponents of amnesty say they want to "eliminate an illegal subclass." I agree with this goal, but suggest we achieve it by sending illegal aliens home. Similarly, the puzzling talk of "equities" developed by illegal aliens long resident in our country is unconvincing. I believe unemployed Americans and our overburdened taxpayers have greater equities.

I also believe the specter of "mass deportations" raised by amnesty proponents is unrealistic. Even with a determined Congress and President, it would take years to locate the millions of illegal aliens who have entered during a decade of inattention by Congress and three administrations. To say that such a gradual return to proper immigration control cannot be achieved without wholesale violations of the rights of Americans of Hispanic descent is an insult to this nation and the dedicated employees of the INS, many of whom are Hispanic Americans. There is nothing inhumane in returning illegal aliens to their native lands.

Vociferous organizations which champion amnesty also have opposed employer sanctions, INS workplace raids, INS residential area control, and even replacing torn fences on our southern border. Before we give too much weight to their opinions, we should remember the views of the majority of our citizens who oppose amnesty. In order to secure needed legislation to deal with illegal immigration we should not have to offer amnesty to attempt to placate those who champion lawbreakers. Even if pressure groups fill the air with phony cries of "discrimination", we have a duty to enforce our laws.

Lest my concern with rewarding lawbreaking through amnesty and my opposition to illegal immigration be misinterpreted as hostility to immigrants or immigration, I think it sufficient to say that I favor continuation of our tradition as a home for refugees fleeing tyranny and reasonable numbers of immigrants willing to enter pursuant to our laws. But compassion and generosity have their limits. Our immigration laws limit the number of immigrants we admit each year so that we can absorb them without adversely affecting our own citizens.

The mass amnesty contained in this bill is so detrimental to enforcement of our immigration laws and the interests of the American people that I must reluctantly vote against the measure.

JOHN P. EAST.

MINORITY VIEWS OF SENATOR KENNEDY

I voted against this bill in the Committee, as I did last year, because I have serious reservations about the measure in its present form. During the Committee's consideration of the bill I offered a number of amendments to address these concerns, and I intend to do so on the Senate floor.

However, I want to acknowledge at the outset, as I did last year, that the pending bill is the product of extensive study and lengthy hearings. It represents a blending of conflicting views and has involved some very difficult compromises. Most of all, it is a reflection of the leadership and thoughtful work of our distinguished colleague from Wyoming, Senator Simpson, Chairman of the Subcommittee on Immigration and Refugee Policy.

Nevertheless, I continue to have reservations about the bill in the following areas:

INTERNATIONAL COOPERATION

Athough I am concerned over specific provisions of this legislation, I am even more concerned over the larger issue of the migration pressures our country will encounter in the decades ahead. I am concerned this legislation is moving forward in a kind of vacuum, and that we will be deluding ourselves if we think this legislation will really solve the many immigration problems our country—along with many others—face today. At best this is a band-aid to a potential hemorrhage—a very tentative step in a long-term process.

Every day it becomes clearer that the complex migration problems, which are growing around the world, will require greater international action. Domestic laws and actions alone are no longer sufficient. Economic and developmental problems in neighboring countries—or even in countries far away—will have more impact upon migration to the United States than any combination of domestic laws or policies. And violence and conflict can produce a flow of people that only concerted international action can deal with.

There are no easy answers. But it is imperative that we understand that migration is an international issue, and not merely a domestic concern. It will require far greater international cooperation than we have undertaken to date.

In fact, one of the most important recommendations of the 1981 Select Commission on Immigration and Refugee Policy, was the United States should become more actively involved in efforts to achieve international cooperation on world migration and refugee problems.

I strongly endorse the Commission's recommendations that the United States should expand bilateral consultations to promote cooperation on migration issues in the Western Hemisphere—especially with our neighbors, Mexico and Canada. These two nations deserve special consideration in our policies, and I commend Senator Simpson for his personal efforts to meet with the leaders of Mexico during the development of this legislation.

However, this bill is moving forward without adequate consultations by the Executive Branch with our neighbors. If we are to achieve genuine cooperation we must consult in advance, before changes in our immigration policies are set.

Unilateral policies, like fences, do not always make good neighbors. During our consideration of this bill we must give greater weight to this concern and the Administration must give greater evidence that it, too, is pursuing it.

EMPLOYER SANCTIONS

A fundamental concern I have about this bill is that it must not become a vehicle for discriminatory action against Hispanic Americans and other minority groups. Immigrants and undocumented aliens must not become scapegoats for the serious problems our country faces today. In too many quarters, migrants and undocumented aliens are being unfairly blamed for the current high levels of unemployment in the United States.

We must be extremely cautious to avoid legislative action that raises the level of intolerance and discrimination in our society. The employer sanctions provisions present this danger, and I regret that the Committee did not accept an amendment that addresses this issue.

I have in the past supported legal sanctions against employers who knowingly hire undocumented aliens. I have done so as a matter of principle; it is wrong that the sanctions under current law fall solely on the undocumented aliens, not on employers who may be exploiting them. The government needs stronger enforcement tools to deal with the serious problem of employers who engage in a pattern and practice of hiring and exploiting undocumented aliens.

However, throughout the Select Commission's work, as well as during the extensive hearings of the Subcommittee, two central objections were raised again and again: (1) that the proposed employer sanctions might result in discrimination against certain American workers, especially Hispanics and Asians; and (2) that employers would be unnecessarily burdened with paperwork in implementing the sanctions.

The history of immigration legislation in recent decades is that once an immigration law is enacted, Congress does not act again for many years. To assure that Congress will not ignore any discrimination that arises in the implementation of employer sanctions, I offered two amendments to provide the following safeguards:

> (1) To insure that a fair and impartial study of the sanctions program is available to Congress, and that public hearings will be held on them, I felt the General Accounting Office should be explicitly required in the statute to undertake an independent study of their implementation. I am pleased the Committee

accepted this amendment, as well as providing additional authorization for the work of Equal Employment Opportunity Commission, and to the Department of Labor for enforcement activities of the Wage and Hour Division and the Office of Federal Contract Compliance Programs within the Employment Standard Administration.

(2) The employer sanctions should be "sunsetted" after five years, so that Congress will be obliged to face this issue of discrimination squarely, if it develops. If employer sanctions become a pretext for discrimination, then the authority for them should expire unless Congress enacts new legislations with additional protections. If no discrimination materializes, then under my amendment sanctions will be continued.

I regret the Committee did not accept this second provision. If it is adopted, I believe minorities in our society will be given a pledge that, if a serious pattern of discrimination emerges, Congress will not ignore it. Given the significant changes proposed by this legislation, this is the minimum assurance we should be willing to provide.

LEGAL IMMIGRATION

It is frequently heard today that immigration to the United States is, somehow, bad—that the numbers are too high, the impact is undesirable, and the consequences for the future are negative. These implications fly in the fact of American history, and I reject them, as did the Select Commission on Immigration and Refugee Policy.

Illegal immigration must be controlled. But there is no evidence that the current levels of *legal* immigration are dangerous or contrary to our national interests. In fact, the Select Commission concluded:

> Based on its research and analysis, the Commission has found the contributions of immigrants to the U.S. society to be overwhelmingly positive. It believes that an immigrant admissions policy that facilitates the entry of qualified applicants is in the U.S. national interest. Whether measured by the number of Nobel Prize winners who have come to the United States as immigrants (30 percent of all U.S. Nobel laureates), the introductions of new concepts in music, art and literature or the industries built by immigrant labor, immigration has been of enormous benefit to this country.

The Commission also rejected the notion that current immigration is destablizing or somehow threatening to our national unity. Although the admission of immigrants and refugees to the United States has increased numerically over the past decade, the proportion of foreign born citizens in the United States is dramatically lower than at any previous point in our history. In 1890, the percentage of foreign born was 14.7; in 1970, it was down to a bare 4.7.

Veiled reference is also frequently made to the more than 800,000 immigrants and refugees who entered the United States in 1980. But all who use that figure—often rounding it off to a neat one million—do so knowing it was an extraordinarily unusual year due to the admission of large numbers of Indochinese refugees and the influx of Cubans and Haitians. The numbers before and since are much lower, and will not reach the 1980 level again in the foreseeable future.

We must avoid scare tactics and scare statistics designed to feed false fears.

PREFERENCES FOR IMMIGRATION

The bill makes a number of unfortunate and unwise changes in the existing immigration preference system. These changes will jeopardize our country's historic commitment to family reunion as the principal goal of our immigration policy.

For the first time, this bill places the admission of the immediate relatives of United States citizens—spouses, children and parents—under a rigid annual ceiling.

These changes are contrary to the recommendations of the Select Commission as well as to the views of every recent Administration—Republican or Democratic. I agree with the Reagan Administration that they compromise our traditional concern for family reunification.

Throughout our history we have never placed a ceiling on the admission of immediate relatives, and there is no valid reason for doing so now. Under the terms of the bill, immediate relatives are still given the highest priority; but if their numbers increase in the years ahead, other family reunion preferences will be cut bact.

I am gratified the Committee accepted my amendment to restore 5th preference for brothers and sisters of United States citizens, although limiting it in the future to unmarried brothers and sisters. I remained troubled, however, by the bill's restrictions on the 2nd preference and the inclusion of immediate relatives in an overall immigration ceiling.

JUDICIAL REVIEW OF ASYLUM CASES

Some very important reforms of the asylum adjudication process have been achieved in this legislation and I support them. However, I regret that the Committee limited judicial review of the asylum process without granting full independence to the new Immigration Board, as originally proposed when the bill was introduced. As a result, the Committee bill does not achieve the autonomy the asylum process needs in order to assure fair and non-politicial adjudication of asylum claims. In this situation, the elimination of judicial review is particularly objectionable, since it has been the only avenue for challenging discriminatory decisions. Habeas corpus jurisdiction is not sufficient since the bill also limits this remedy to constitutional, not statutory, habeas corpus.

I believe the provisions adopted by the House Judiciary Committee achieve these goals, and I intend to offer them as a substitute amendment on the floor.

TEMPORARY FOREIGN WORKERS

I continue to support the unanimous vote of the Select Commission and the actions of the Committee in rejecting the establishment of an expanded temporary foreign worker program. Adoption of the legalization program and implementation of the new immigration system will result in the legal admission of additional immigrants and an adjustment in the status of undocumented aliens already working here.

Until the impact of these changes is assessed, there is no valid justification for a large new temporary foreign worker program. Any such program would have serious consequences for American labor and American wages. The Committee has acted responsibly in rejecting calls for a new "bracero" program.

The existing need for temporary workers can be met by the H-2 visa program. The Committee has acted to make this program more flexible, but we must be extremely cautious not to allow these changes to undermine labor standards or to depress wages. Employers seeking H-2 workers must be required to seek American workers first, and we should plan the elimination of this program in the future, not its expansion.

FOREIGN STUDENTS

The Committee bill should be amended to permit students of exceptional merit and ability—who are participating in essential academic, professional and industrial programs—to remain in this country without leaving for two years, and not subject to an arbitary ceiling. To do otherwise is contrary to our national interests. It also ignores the current reality that exceptionally qualified students do not return to their homes in the Third World or elsewhere; they simply move to Japan or Europe and use their skills to help those nations compete against the United States. It makes no sense, when our faculties and firms are starved for scientific talent, for the United States to train engineers or computer specialists at M.I.T. or Berkeley for jobs in Tokyo or Bonn.

LEGALIZATION PROGRAM

The Select Commission voted unanimously to recommend that a flexible and generous program be established to adjust the status of undocumented aliens already leading productive lives in the United States. It did so because "the existence of a large undocumented/illega migrant population should not be tolerated"—and because "the costs to society of permitting a large group of persons to live in illegal, second-class status are enormous." The Commission recognized that mass deportations were out of the question, for both legal and humanitarian reasons; such deportations would undermine new enforcement programs and would waste available enforcement resources.

For a legalization program to work, it must be comprehensive, it must reach out to as many undocumented aliens as possible, and it must have as few exceptions as possible.

I regret, therefore, that the Committee did not this year adopt my amendment to make the legalization cut-off date more inclusive—moving it forward from January 1, 1980, to December 31, 1981. Even by the estimates compiled by the Immigration and Naturalization Service this will mean that close to two-thirds of the undocumented aliens in the United States will not be eligible for the legalization program. It means that a large, subterranean, exploited class of people will be left in limbo.

Everyone who has worked on this legislation agrees that the legalization program is a critical part of the package of reforms we are considering. Yet, under the terms of the bill, legalization will not achieve its goals because the cut-off date will exclude two-thirds of those we are seeking to legalize. This makes no sense on the merits, and no political sense either. Why make a difficult political decision to legalize undocumented aliens, knowing it will not really deal with the problem?

Finally, some concern has been expressed over the impact this legalization program will have on state and local social programs. According to the research of the Select Commission and others on the characteristics of the undocumented alien population, these concerns appear to be exaggerated. Undocumented aliens are here to work, not to seek welfare; they are in many respects undocumented taxpayers contributing to the communities in which they live without the benefits of those taxes.

Nonetheless, should there develop clear evidence after the one-year legalization program that a significant financial burden has developed on state and local programs, the Federal Government should, of course, respond to any financial burdens imposed by this legislation.

CONCLUSION

As ranking minority member of the Subcommittee on Immigration and Refugee Policy, I have been honored to work closely with the Chairman, Senator Simpson, in a bipartisan effort to achieve genuine reforms, based upon reason, fairness, and careful study. We have attempted to review immigration policy in light of America's best interest, yet with full regard for our immigrant heritage and our humanitarian traditions. I know from many hours of hearings, and from the two-year effort of the Select Commission, how hard Senator Simpson has personally worked to achieve this difficult task.

I pledge my continued cooperation to enact a bill that reflects our shared goals. We have come a long way—but we still have some distance to go.

We have rejected—as we must continue to reject—calls for harsh and discriminatory enforcement of our immigration laws, including the deputizing of local police officers to enforce our complex immigration policies. We have rejected cruel and racist calls against immigration. We have rejected efforts to drastically reduce our annual immigration quotas and to restrict the admission of refugees.

But we must also assure minorities in our society that no new discrimination will result from any provision in this bill. If we can give this assurance in clear and unmistakable terms—and if we can strengthen the bill in other areas—I believe it should and will become law, and will be a step toward immigration reform.

EDWARD M. KENNEDY.

ATTACHMENT—SELECTED QUOTATIONS

A. COMMENTS FROM HEARINGS ON S. 529

"I believe the Immigration Reform and Control Act represents an impressive example of balanced and humane legislative leadership. Rarely, if ever, has proposed legislation on a controversial topic received almost universal acclaim from the nation's opinion leaders of all political persuasions, from past Presidents and cabinet officers from both parties, and from over 80 percent of the United States Senate. The Congress can be justifiably proud of the leadership it has exercised in this difficult matter."—Michael Teitelbaum, Senior Associate, Carnegie Endowment for International Peace, S. 529 hearings, 2/25/83.

"We believe that employer sanctions, properly enforced, could have a far-reaching positive effect on the U.S. labor market and particulary the black force."—Althea Simmons, Director, Washington Bureau of NAACP, S. 529 hearings, 2/25/83.

"The Administration remains strongly convinced that it is in the national interest that comprehensive immigration reform legislation be enacted without further delay. In the bipartisan tradition that should continue to dominate debate on this subject, we pledge our support in achieving that goal . . .

"The cornerstone of immigration control in S. 529 is therefore a provision making it illegal knowingly to hire aliens whos are not authorized to work in the United States. Employer sanctions is the only remaining credible tool to stop the flood of illegal immigration."—Attorney General William French Smith, S. 529 hearings, 2/28/83.

"Your bill parallels most of the recommendations of the Select Commission on Immigration and Refugee Policy and recognizes the necessity for controlling illegal immigration—'closing the back door'—while at the same time permitting legal immigration at a reasonable level—'opening the front door.' . . . our Citizens' Committee of concerned Americans applauds the effective, intelligent and fair manner in which your bill addresses the issues of identifying those legally eligible to work in this nation and sanctions against employers who knowingly hire undocumented workers."—Theodore M. Hesburgh, Co-Chairman of the Citizens' Committee for Immigration Reform; Former Chairman, Select Commission on Immigration and Refugee Policy, S.529 hearings,(2/25/83).

B. EDITORIAL COMMENTS ON S. 529

"This bill is the culmination of more than 10 years' work and hearings to reach the best possible blend of compromise and effectiveness. Atty. Gen. William French Smith has congratulated the authors of the present legislation on 'how well you balanced the many competing interests.' "—U.S. News and World Report, April 18, 1983.

"Last month, at their annual meeting in Bal Harbour, Fla., the leaders of the labor organization (AFL–CIO) issued a policy statement urging Congress to act on immigration reform legislation. Congress has a responsibility to act early on this plea. Moving the Simpson-Mazzoli bill to the floor this spring is a must."—the Washington Post, March 28, 1983.

"No reform measure can be written that will satisfy everyone, but the Simpson-Mazzoli bill's blend of employer sanctions, amnesty, toughened deportation procedures and an annual immigration cap is realistically responsive to the problem."—Dallas Times Herald, March 7, 1983.

"Asked by (Senator) Simpson whether he thought the bill's employer sanctions provision would result in discrimination against Americans of foreign descent, (Attorney General) Smith said: 'I'm satisfied that the bill guards against discrimination. I expect that discrimination would be reduced rather than increased as a result of safeguards built into the bill.'"—Chicago Tribune, March 1, 1983.

"In the last Congress, a comprehensive bill to reform the nation's immigration laws made it through the Senate but died in the House. The bipartisan bill has been reintroduced by its chief sponsors—in the Senate, Sen. Alan K. Simpson (R., Wyo.) and in the House Rep. Romano L. Mazzoli (D., Ky.). The bill is not in any way racist. It is not designed to bar America's golden door. To the contrary, it would regularize the status of most illegal aliens, enabling them eventually to obtain American citizenship."—the Philadelphia Inquirer, February 23, 1983.

"For reasons of vitality, humanity and history, America wants and needs immigrants. What it does not need is such an uncontrollable flood of illegal migrants that it tries public patience and foments a backlash against all newcomers. That's the genuine danger and the Simpson-Mazzoli bill is the bipartisan remedy."—the New York Times, February 21, 1983.

"We contend that the Simpson-Mazzoli bill, while certainly not perfect, represents an important step forward from the present immigration system . . . We recommend quick passage of the Simpson-Mazzoli bill during this session of Congress as the best remedy in sight."—Dallas Times Herald, February 12, 1983.

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Calendar No. 98

98TH CONGRESS } SENATE { REPORT
1st Session } { No. 98-62

ERRATA

IMMIGRATION REFORM AND CONTROL

APRIL 21 (legislative day, APRIL 18), 1983.—Ordered to be printed

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Mr. SIMPSON, from the Committee on the Judiciary, submitted the following

REPORT

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany S. 529]

CORRECTIONS

Immigration Reform and Control Act of 1983—Senate Report No. 98-62 on S. 529

The Report to accompany S. 529 was prepared during a rather extraordinarily hectic 48-hour period at the request of the office of the Majority Leader in order that the bill might be scheduled and considered on the Floor of the Senate during an available time period immediately following Committee consideration of the bill. No drafts or proofs were available to the Committee staff for review and correction before final printing. That accelerated procedure resulted in a number of errors in the Report which are now corrected by this errata sheet.

On page 9, in the third sentence of the first full paragraph, delete the words "unless the President and the Judiciary Committees of the Congress agreed that this was unnecessary to the reliability of the system".

On page 32, beginning on the 23rd line from the bottom, delete ", unless the President and the Judiciary Committees of Congress agree that such form is unnecessary to the reliability of the system".

S523-3

On page 40, the fourth line from the bottom should read "acting immigration judges for", deleting "(other than in asylum proceedings)".

On page 43, the fifth paragraph should read as follows:

> Fourth, visas are made available for individuals who on or before the date of enactment had a petition filed in his or her behalf for the present fifth preferencce status (brothers and sisters of adult U.S. citizens) and who, at the time of application for admission, continue to qualify under the present fifth preference standards. The bill continues the fifth preference for unmarried brothers and sisters. The ceiling is 10 percent of the annual numerical limitation, plus any numbers not required for the previous preference categories.

[This change deletes the last five sentences of the paragraph.]

On page 45, the third line from the bottom, strike the word "and" and insert in lieu thereof "or".

On page 50, delete the entire paragraph that begins with "The nonrefundable," and ends with "terms of the agreement".

On page 51, fifth paragraph, second line, the date "January 1, 1982." should read "January 1, 1980.".

On page 52, in the first line, delete the last word "other", through the rest of that sentence and all of the next 2 sentences which end with "period of time."

On page [illegible], in the second line of the fourth paragraph, delete "S. 2222" and insert in lieu thereof "S. 529".

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